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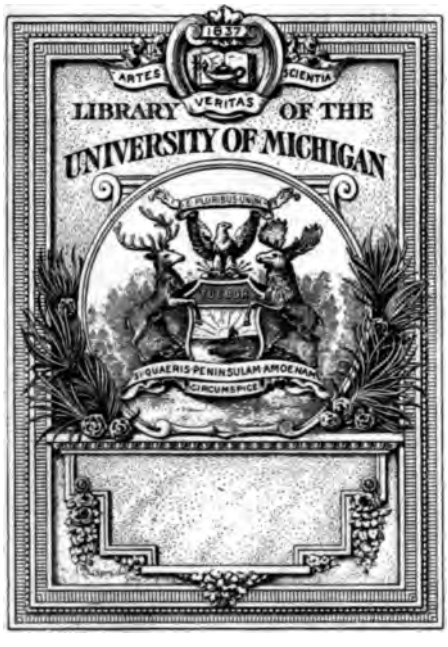

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 201.

MEMORIAL RELATING TO CLAIMS OF LOYAL CREEK INDIANS.

Mr. OWEN presented the following

MEMORIAL RELATING TO THE CLAIMS OF THE LOYAL CREEK INDIANS.

JANUARY 27, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate and House of Representatives in Congress assembled:

The undersigned, chief of the Creek Nation of Indians and the other signers hereto, being the duly authorized delegates of said nation, herewith submit the following memorial:

STATEMENT.

At the beginning of the late civil war the Creeks were located on a large reserve in the Indian Territory and had accumulated considerable property, especially extensive herds of cattle and horses. The tribe was about evenly divided in its sympathies between the two great contending parties. About one-half of them cast their fortunes with the Confederacy, the remainder continuing loyal to the Union. The loyal party were compelled to leave their homes, farms, utensils, stocks, etc., and flee to the Federal lines. They fought their way out through the Indian Territory and into Kansas with great loss of life and property and immense suffering. All the able-bodied men in the loyal party enlisted in the Union Army and served throughout the war. It is supposed that there were about 1,500 of these Creek soldiers.

At the close of the civil war it became necessary to readjust the relations of the five tribes of the Indian Territory with the United States. In each of the tribes there was a loyal and disloyal party. Treaties had been made by each with the Confederacy and on the return of the Indians to their homes much confusion prevailed, in some instances amounting to anarchy. A commission was designated on the part of the United States to negotiate new treaties with them. It was comprised of the following persons: D. N. Cooley, Commissioner of Indian Affairs; Hon. Elijah Sells, superintendent of southern superintendency; Thomas Wistar, a leading member of the Society of Friends; Brig. Gen. W. S. Harney, U. S. Army; and Col. Eli Parker, of General Grant's staff. This commission met

delegates from the various tribes and factions, at Fort Smith, on the 8th of September, 1865, and negotiations were carried on for twelve days. It became evident that separate treaties could not be negotiated at that time, and a general treaty "of peace and amity" was drawn up and eventually subscribed by the commissioners and all the delegates. A copy of this general treaty will be found on pages 330 and 331 of the Report of the Commissioner of Indian Affairs for the year 1865. It is not among the published treaties. By its terms the Indians renewed their allegiance to the United States, acknowledged its exclusive jurisdiction over them, revoked all treaties made with the Confederacy, peace and friendship were declared, and provision was made for subsequent treaties with the respective tribes to settle all questions growing out of the war.

In pursuance of this treaty of 1865, and the promises made to and by the Indians at that time, the various treaties of 1866 were negotiated at Washington, generally known as the "reconstruction treaties." The treaty with the Creeks, under which the present claims are asserted, is one of them.

Now, at the Fort Smith negotiations, the commissioners on behalf of the United States, in the presence of all the Indian delegates, promised those who had remained loyal to the United States that their loyalty should be recognized "in a signal manner," and that they should "be liberally provided for and dealt with." The delegates, both those representing the loyal and disloyal elements, came to Washington in the winter of 1866, prepared to approve treaties that would provide for paying the losses suffered by those who remained faithful to the Government during the war and those who fought in the Union armies.

Provisions looking to this end were inserted in the treaties with the Choctaws and Chickasaws, Seminoles and Creeks. These treaties were negotiated on the part of the United States by Commissioners Cooley and Elijah Sells, two of the commissioners who had made the promises to the loyal Indians at Fort Smith. There is some difference in the language used in the various treaties providing for reimbursing the losses sustained by the loyalists, but as the circumstances were the same in each case, it must be presumed that the commissioners intended to treat the loyal Creeks quite as liberally as the loyal Seminoles or the loyal Choctaws and Chickasaws. The loyal claimants within these three last-named tribes have been duly settled with and paid. The claims of the Choctaws and Chickasaws were adjusted as early as July 25, 1868. Among these two tribes there were only found 212 claimants. They were paid all they claimed and something more.

The claims of the loyal Seminoles were settled and paid during the Fifty-sixth Congress. (See 31 Stat. L., 240.) In the case of these Seminoles, the commissioners had allowed the claims as filed by the claimants with practically no deductions whatever, their total claims being $216,351.20, and the amount allowed $213,915.95. This finding of the commissioners in the Seminole case was made as early as March 21, 1866, and very soon thereafter there was paid on these claims $50,000, about 25 per cent. The Senate, during the Fifty-sixth Congress, acting by consent as arbitrator and following the recommendation of its Committee on Indian Affairs, reduced the total awards 45 per cent, and after subtracting the payment of $50,000, allowed

interest on the remainder at 5 per cent from the 16th day of August, 1866, up to the date of payment, something more than thirty-two years, the whole amounting to $177,085, the interest aggregating nearly double the amount of the reduced principal.

The commission appointed to examine and report on the loyal Creek claims was composed of Brig. Gen. W. B. Hazen, the acting superintendent of the southern superintendency, and Capt. F. A. Field, acting agent for the Creeks, both being prominent officers in the Regular Army. It is evident that each claim was carefully scrutinized and only allowed upon the production of the clearest and most positive evidence. The aggregate of the claims filed by these loyal Creeks was something over $5,000,000, while the amount allowed was less than $2,000,000. The commission scaled down the claims about 62 per cent, the exact total allowance being $1,836,830.40.

Sometime after these awards had been reported to the Department and approved by the Commissioner of Indian Affairs and the Secretary of the Interior, the claimants were paid $100,000, being about 5 per cent on the amount of the awards, while, as stated above, the Seminoles had similarly received a payment of 25 per cent.

Practically the only distinction between the claims made by the loyal Creeks and those made by the Choctaws and Chickasaws and the Seminoles is that in this Creek case the claim aggregates a much larger amount. There were but 212 of the loyal Choctaws and Chickasaws, and but 340 of the loyal Seminoles, while there are 1,523 separate claims allowed the loyal Creeks. These loyalists all had the same emphatic promises of payment when the general treaty was negotiated at Fort Smith in 1865.

THE PROCEEDINGS IN CONGRESS.

In 1901 Congress enacted into the statute an agreement made by the Dawes Commission with the loyal Creek Indians, whereby their claim was to be "submitted to the Senate of the United States for determination," the Senate acting as a court of arbitration. The act provided that whatever sum was awarded "provision shall be made for immediate payment of the same." (31 Stat. L., 869, sec. 26.)

In pursuance of that act the claim of the loyal Creeks was duly submitted to the Senate and sent to the Committee on Indian Affairs for investigation. The committee examined treaties and records, heard testimony from the claimants—both oral and by depositions—heard counsel, who submitted briefs, and finally reported its findings to the Senate as an item on the Indian appropriation bill, which reads as follows:

In pursuance of the provisions of section 26 of an act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes, approved March 1, 1901, there is hereby awarded, as a final determination thereof, on the so-called "loyal Creek claims" named in said section 26, the sum of $1,200,000, and the same is hereby appropriated, out of any money in the Treasury not otherwise appropriated, and made immediately available. And the Secretary of the Treasury is hereby authorized to pay, under the direction of the Secretary of the Interior, to the loyal Creek Indians and Freedmen named in articles 3 and 4 of the treaty with the Creek Nation of Indians of June 14, 1866, the said sum of $1,200,000, to be paid to such Indians and Freedmen only whose names appear on the list of awards made in their behalf by W. B. Hazen and F. A. Field, as commissioners on behalf of the United States to ascertain the losses of said Indians and freedmen as provided in said articles 3 and 4; and such payments shall be made in proportion of the awards as set out in said lists and shall be in full settlement and satisfaction of all claims under said articles 3 and 4: *Provided, however*, That if any of said loyal Creek Indians or freedmen whose names are on said list

of awards shall have died, then the amount or amounts due such deceased person or persons, respectively, shall be paid to their heirs or legal representatives: *And provided further*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to first withhold from the amount herein appropriated and pay to S. W. Peel, of Bentonville, Ark., the attorney of said loyal Creeks and freedmen, a sum equal to 10 per cent of the amount herein appropriated, as provided by written contracts between the said S. W. Peel and the claimants herein, the same to be payment in full for all legal and other services rendered by him, or those employed by him, and for all disbursements and other expenditures had by him in behalf of said claimants in pursuance of said contract. And further, said Secretary is authorized and directed to pay to David M. Hodge, a Creek Indian, of Tulsa, in the Creek Nation, a sum equal to 5 per cent of the amount herein appropriated, which payment shall be in full for all claims of every kind made by said David M. Hodge or by those claiming under him, by reason of any engagement, agreement, or understanding had between him and said loyal Creek Indians. (Cong. Rec., vol. 36, pt. 3, 57th Cong., 2d sess., p. 252.)

A discussion followed in which the attention of the Senate was specifically called to the fact that by the adoption of that item the Senate announced its award under the law. In the language of Senator Quarles, who was a member of the Committee on Indian Affairs, and was opposed to the award: "The determination of the Senate upon this proposition will amount to an award upon which an action will lie, quite independently of the fate of this provision in the other House of Congress." In a word, the Senate was fully apprised of the whole matter and then passed the item without any dissenting votes. (See pages 2252, 2253, and 2254 of the Record above cited.)

The House disagreed generally to the amendment made by the Senate to the Indian bill, and the measure went to conference. When the conferees made their final report the item carrying the award had been modified by reducing the amount found by the Senate from $1,200,000 to $600,000, and provided that the Indians should accept the same as full satisfaction of all claim and demand growing out of said loyal Creek claims, and that the payment should be a full release of the Government. (32 Stat. L., 995.)

The money thus appropriated, being only one-half of the amount awarded, was accordingly paid to the Indians. But in spite of the fact that they accepted the amount under the terms of the act rather than lose all payment for their losses, yet they feel that the amount awarded them under the conditions of a solemn agreement between themselves and the Government has been only one-half paid and they are now entitled to the balance. They respectfully submit the following reasons for their present claim:

I.

The losses they sustained were the direct result of their loyalty to the Government. For this loyalty they were not only driven from their homes, but many of them—men, women, and children—in their flight from the Indian Territory to Kansas during the winter of 1861-2 lost their lives by attacks made upon them by other Indians and by organized whites, and all of them suffered untold hardships. More than 1,500 of the men entered the Union Army. The Commissioner of Indian Affairs in his report for the year 1865 says:

The Creeks were nearly divided in sentiment at the opening of the war, about 6,500 having gone with the rebellion, while the remainder, under the lead of the brave old chief, Opothleyoholo, resisted all temptations of the rebel agents and of leading men, like John Ross, among the Indians, and fought their way out of the country northward,

in the winter, tracked by their bloody feet upon the frozen ground. They lost everything—houses, homes, stock, everything they possessed. Many joined the United States Army. (Commissioner's Report, 1865, p. 39.)

II.

The Government promised them that they should be reimbursed for their losses. During the negotiations with the Five Civilized Tribes, preceding the reconstruction treaty of 1865, the commissioners on the part of the United States assured the Indians, loyal and disloyal, that "those who have been loyal, although their nation may have gone over to the enemy, will be liberally provided for and dealt with." Again the Indians were assured that above all other considerations it was the determination of the Government "to recognize in a signal manner the loyalty of those who had fought upon the side of the Government and endured great sufferings on its behalf." (Commissioner's Report, 1865, pp. 34, 299.)

And article 4 of the treaty of 1866 (14 Stat. L., 787) undertook to ascertain their losses and see that the same were paid. This ascertainment was subsequently made by two officers of the Army, Gen. W. B. Hazen and Capt. F. A. Field. The Indians filed claims with this commission amounting in the aggregate to $5,090,808.50. The two commissioners, in keeping with their military training, insisted on having every item proven by witnesses presented before them. The impoverished Indians, scattered over a territory twice as large as the State of Massachusetts, without property—not even a pony left them—and with many of their witnesses dead or left back in Kansas, could only comply in part. But they did prove the loss before this exact and exacting court of property found to be worth $1,836,830.41. This amount was awarded by General Hazen and Captain Field and approved by the Commissioner of Indian Affairs and a qualified approval affixed by the Secretary of the Interior.

III.

The accuracy of the findings of Hazen and Field was never challenged by the Government. Using them as a basis, the sum of $100,000 was paid to the claimants. The Indians refused to take any portion of this latter amount until assured by General Williamson, the Government agent authorized to make the payments, that the balance would be paid. Thus when the matter came before the Senate as arbitrator, the Indians claimed the full amount of their losses as found ($1,836,830.41) less the $100,000 which had been paid, making $1,736,830.41. They also claimed interest for the thirty-six years that the claims had remained unpaid; this based on the fact that the Government usually paid interest on Indian funds, and that interest had been paid to the loyal Seminoles.

The Indian Committee, representing the Senate in making the investigation, determined upon some theory unknown to the claimants to reduce the amount to $1,200,000. The loyal Indians of the Choctaws and Chickasaws had been paid the full amount of their losses as found, and their claims had not been cut by the commissioners who passed upon them.

The claims of the loyal Seminoles were submitted to the arbitration of the Senate by the same act that provided for the submission

of the loyal Creek claims. The Senate reduced by 45 per cent the amount which the commissioners had allowed for losses and then added interest at the rate of 5 per cent for some thirty-three years. The reduction of the principal was based on the fact that the Indians had been allowed all they claimed, but the reduced principal and the interest brought the award to $186,000, while the original allowance was $213,888.95. Adding the $50,000 which had previously been paid, the loyal Seminoles received $236,000.

The Choctaws and Chickasaws were thus paid the full amount of losses as they claimed them, and paid promptly after the date of the reconstruction treaty, and the Seminoles were generously dealt with by the Senate, a large amount of interest having been added to their claim. Yet, when the Senate came to deal with the loyal Creek claims, which had been already cut by the commissioners, Hazen and Field, about 62 per cent, it further reduced the principal something more than 33 per cent (from $1,836,830.40 to $1,200,000) and refused to allow any interest. The claimants would have been glad to have accepted this award and been allowed. after the thirty-six years of waiting, to go in peace.

IV.

A fourth reason why the balance of the award should now be paid is the fact that the Indians submitted the whole matter to the Senate, trusting with the simplicity of children in its honor and justice. They were heard, the award was announced, and they returned to their homes with the feeling of perfect security that at least that much was safe and the $1,200,000 would be paid them and the long controversy ended.

They had no knowledge of what was transpiring in the conference room. They were neither notified or heard, yet provision was made for paying only one-half of their judgment, and conditioned that they should receive this as payment in full. The award between private parties would have been final and binding. (Wright *v.* Tebbitts, 1 Otto, 252.)

V.

Congress in its legislative capacity could not legally alter the award. The Senate in pursuance of an agreement and a law was the sole arbitrator. It formally announced its award. It never again opened the case. It never again sat as an arbitration board. Its sole connection with the matter thereafter was as a branch of Congress in its political capacity. Its function as a court was terminated. The question of finding what was due these loyal Creeks, who, in the language of the act providing for the arbitration, "had suffered because of their loyalty to the United States Government during the civil war," was fully closed.

VI.

To coerce the Indians to sign receipts in full for a part of their award and refuse to pay the balance would, if done by an individual, be immoral. These untutored wards of the nation, who have been trained for generations to depend upon agents and other officers of of the Government in all business transactions, and to do whatever

they are told to do, are presented with a sum of money and a receipt and told to sign the latter in order to secure the payment. Will such a receipt be held as a bar against the individual Indian? Is there not such a sense of injustice growing from the facts of this case as will compel the payment of the whole award? The Indians depend more upon such considerations than upon legal rights which might be asserted as to the frailty of receipts in general as evidence of payment, and especially as to receipts procured by coercion or duress.

In view of the foregoing statement, we pray that the measure of relief therein indicated shall be granted to our unfortunate brethren, the loyal Creeks.

All of which is most respectfully submitted.

MOTY TIGER,
Principal Chief, Creek Nation.
SAML. J. HAYNES,
JOHNSON E. TIGER,
G. W. GRAYSON,
Delegates.

EXHIBIT TO THE MEMORIAL OF THE LOYAL CREEK INDIANS.

I. *Arbitration ordered.*

SEC. 26. All claims of whatsoever nature, including the "loyal Creek claim," under Article IV of the treaty of eighteen hundred and sixty-six, and the "Self-emigration claim" under Article XII of the treaty of eighteen hundred and sixty-two, which the tribe or any individual thereof may have against the United States, or any other claim arising under the treaty of eighteen hundred and sixty-six, or any claim which the United States may have against said tribe, shall be submitted to the Senate of the United States for determination; and within two years from the ratification of this agreement the Senate shall make final determination thereof; and in the event that any sums are awarded the said tribe, or any citizen thereof, provision shall be made for immediate payment of the same.

Of these claims the "loyal Creek claim," for what they suffered because of their loyalty to the United States Government during the civil war, long delayed, is so urgent in its character that the parties to this agreement express the hope that it may receive consideration and be determined at the earliest practicable moment. (31 Stat. L., 869, sec. 26, Mar. 1, 1901.)

II. *When war broke out.*

TREATY OF 1856.

ARTICLE XVIII. The United States shall protect the Creeks and Seminoles from domestic strife, from hostile invasion, and from aggression by other Indians and white persons, not subject to their jurisdiction and laws; and for all injuries resulting from such invasion or aggression, full indemnity is hereby guaranteed to the party or parties injured, out of the Treasury of the United States, upon the same principle and according to the same rules upon which white persons are entitled to indemnity for injuries or aggressions upon them committed by Indians. (11 Stat. L., 704.)

SEC. 17. *And be it further enacted,* That if any Indian or Indians belonging to any tribe in amity with the United States shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong, for satisfaction, in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or subagent to

make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury; and in the meantime, in respect to the property so taken, stolen or destroyed, the United States guarantee to the party so injured an eventual indemnification. (4 Stat. L., 731-732.)

WEALTH OF THE INDIANS.

Most of these tribes had advanced far in civilization, and their country was well provided with good schools and academies. Many of their leading men are to-day thoroughly educated men, of statesmenlike views, fully able to express those views in our language in a manner which can be excelled in few of our deliberative assemblies. Their people were rich in real and personal property, living in the enjoyment of everything needed for their comfort; and considerable wealth had accumulated in the hands of some of them—the slave-holders—so that they lived in a style of luxury to which our thriving northern villages are mostly unaccustomed. Their crops were abundant, but their chief element of prosperity was stock raising, and vast herds of cattle were in their hands as a means of wealth (p. 37). * * *

Of course the loyal portions of all of these tribes have suffered most, for they became refugees from their homes, leaving them in the hands of their enemies, and everything that they left was destroyed. A large number of the loyal Indians of all the tribes entered into the service of the United States, and many of them sealed their fidelity with their life-blood, while many others are maimed for life. Now that the war is over the survivors of these loyal bands claim the sympathy and aid of the Government. (Report Commissioner of Indian Affairs, 1865, p. 37.)

JOURNEY TO KANSAS.

The Creeks were nearly divided in sentiment at the opening of the war; about 6,500 having gone with the rebellion, while the remainder, under the lead of the brave old chief Opothleyoholo, resisted all temptations of the rebel agents and of leading men, like John Ross, among the Indians, and fought their way out of the country northward in the winter, tracked by their bloody feet upon the frozen ground. They lost everything—houses, homes, stock, everything that they possessed. Many joined the United States Army. A large number have been constantly subsisted, often with scanty rations, by Government. A part having gone this year to the Indian Territory having raised some crops under many difficulties, and about one-half of those who thus went south again will have enough corn to carry them through the winter; the others must be subsisted by Government, while 5,000 are now receiving rations. A large number of the southern Creeks are in the same deplorable state. The aggregate number of the tribe is now stated at 14,396. (Report Commissioner of Indian Affairs, 1865, p. 39.)

We were threatened with entire annihilation, and were compelled to leave our homes and all that we possessed in the world, and traveled north in the hope of meeting our friends from the North. We were followed by a large force of rebel Indians and Texans, commanded by Col. D. W. Cooper, and being closely pressed we were compelled to halt and give them battle; and, although their forces were far superior to ours, we drove them back and then resumed our journey north, and crossed the Arkansas and camped in the Cherokee Nation. The above-mentioned fight was known as the Red Fork fight. While we were in the last-named camp the battle of Bird Creek took place, which ended in Colonel Cooper being again driven off. We were attacked the third time by Generals McIntosh and Standwitte with a large force of cavalry and were completely routed and scattered, and a great many of our women and children were killed and captured, and we were scattered throughout the country, exposed to all the dangers of the western wilds and the inclemency of the winter, and traveled to Kansas in blood and snow, not arriving there until the following spring.

It would take volumes to relate minutely the sufferings which we have endured.

We now most respectfully ask you if you can show us one single instance in which more suffering has been endured, or greater sacrifices have been made for the cause of the Union; and we most respectfully ask and beg not to be classed with the guilty.

In May, 1862, we put into the service of the United States one regiment, which included two companies of Seminoles, known as the First Regiment Indian Home Guards, and from this time the privations and hardships of a soldier's life commenced. Instead of guarding our homes we were sent into Missouri and there commenced fighting the enemies of our country and those of the United States. We took part in most of the battles in Arkansas, and in all of those fought in the Indian Territory, participating in twenty-one different engagements.

Furthermore, the remains of our people are as milestones to mark our way through the country which we have traveled. We were honorably mustered out of the service of the United States on the 31st day of May, 1865. (Sanford Berryman, before Commissioners at Fort Smith in 1865, Commissioners' Report, 329.)

III. *Treaty of 1865.*

COMMISSIONERS.

D. N. Cooley, Commissioner of Indian Affairs; Elijah Sells. superintendent southern superintendency; Thomas Wister, a leading Quaker; W. S. Harney, brigadier-general U. S. Army; Eli Parker, colonel on General Grant's staff.

PROMISES.

Immediately upon the opening of proceedings the tribes were informed generally of the object for which the commission had come to them; that they for the most part, as tribes, had, by violating their treaties—by making treaties with the so-called Confederate States. forfeited all *rights* under them, and must be considered as at the mercy of the Government; but that there was every disposition to treat them leniently, *and above all a determination to recognize in a signal manner the loyalty of those who had fought upon the side of the Government, and endured great sufferings on its behalf* (p. 34).

The chairman of the commission during the second day of the negotiations. addressing the assembled delegates from the various tribes, said: "As we said yesterday, we say again, that in any event those who have always been loyal, although their nation may have gone over to the enemy, will be liberally provided for and dealt with" (p. 299).

IV. *Treaty of 1866.*

ARTICLE IV. Immediately after the ratification of this treaty the United States agree to ascertain the amount due the respective soldiers who enlisted in the Federal Army, loyal refugee Indians and freedmen. in proportion to their several losses, and to pay the amount awarded each, in the following manner, to wit: A census of the Creeks shall be taken by the agent of the United States for said nation, under the direction of the Secretary of the Interior, and a roll of the names of all soldiers that enlisted in the Federal Army, loyal refugee Indians and freedmen, be made by him. The superintendent of Indian Affairs for the Southern superintendency and the agent of the United States for the Creek Nation shall proceed to investigate and determine from said roll the amounts due the respective refugee Indians, and shall transmit to the Commissioner of Indian Affairs for his approval, and that of the Secretary of the Interior, their awards, together with the reasons therefor. In case the awards so made shall be duly approved, said awards shall be paid from the proceeds of the sale of said lands within one year from the ratification of this treaty, or so soon as said amount of one hundred thousand ($100,000) dollars can be raised from the sale of said land to other Indians. (14 Stat. L., 787.)

The grammatical and logical construction.

AS CONSTRUED BY OTHER TREATIES.

Choctaw and Chickasaw treaty.—Here is the provision in the Choctaw and Chickasaw treaty:

"ARTICLE XLIX. And it is further agreed that a commission, to consist of a person or persons to be appointed by the President of the United States, shall be appointed immediately on the ratification of this treaty, who shall take into consideration and determine the claim of such Choctaws and Chickasaws as allege that they have been driven during the late rebellion from their homes in the Choctaw (and Chickasaw) nations on account of their adhesion to the United States, for damages, with power to make such award as may be consistent with equity and good conscience, taking into view all circumstances, whose report, when ratified by the Secretary of the Interior, shall be final and authorize the payment of the amounts from any moneys of said nation in the hands of the United States as the said commission may award." (14 Stat. L., 780.)

Seminole treaty.—In the Seminole treaty, which is found in Fourteenth Statutes at Large, page 755, the third article provides for the cession of the whole reserve (2,169,080 acres) to the United States at the rate of 15 cents per acre, giving a fund of $325,362. Then in the same article there is ceded to the Seminoles 200,000 acres, which the Government had just secured from the Creeks, and for which they had agreed to pay 30 cents an acre, but which tract is charged up to the Seminoles at 50

cents an acre, or an aggregate of $100,000. This amount being deducted from the price of the Seminole reserve leaves a balance due the tribe of $225,362. This last amount, by said third article, is then parceled out for the purchase of stock, for agricultural implements, for a permanent school fund, etc., until there are only $50,000 left. The article then concludes:

"The balance, fifty thousand dollars. or so much thereof as may be necessary to pay the losses ascertained and awarded as hereinafter provided, shall be paid when said awards shall have been duly made and approved by the Secretary of the Interior. And in case said fifty thousand dollars shall be insufficient to pay all said awards. it shall be distributed pro rata to those whose claims are so allowed; and until said awards shall be thus paid the United States agree to pay to said Indians, in such manner and for such purpose as the Secretary of the Interior may direct, interest at the rate of five per centum per annum from the date of the ratification of this treaty."

WHAT THE GOVERNMENT HAS DONE.

Choctaws and Chickasaws.—In the case of the Choctaws and Chickasaws the commission to ascertain the losses of those who were loyal was appointed promptly after the ratification of the treaty, and reported awards for 212 claimants, aggregating $233,008. (See report on file in Indian Bureau.) Congress provided for the payment of these awards by an act approved July 25, 1868. (15 Stat. L., 177.) To the loyal Choctaws there was paid $109.742.08 and to the loyal Chickasaws $150.000, making an aggregate of $259,742.08, or $26,743 more than the commission had found due them. The whole amount was paid out of the trust funds belonging to said tribes.

Seminoles.—In the case of the Seminoles the Government appointed the required commission to ascertain and award the losses of the loyal party. They found 340 who were entitled and whose aggregated losses amounted to $213,888.95. This commission was appointed and made its report in 1867. (See S. Rept. No. 1875, 55th Cong., 3d sess.) The $50,000 which was provided to be paid the loyal Seminoles by the terms of article 3 of their treaty of 1866 was appropriated for and paid from the Treasury of the United States. (See 14 Stat. L., 319.) The balance of their losses was provided for in the Indian appropriation bill approved May 31, 1900. (31 Stat. L., 240.) The Senate, acting as a court of arbitration, found that the commission had allowed "the face value of every claim presented." In view of this fact, the amount awarded was scaled down 45 per cent, the $50,000 theretofore paid was deducted, and on the balance was computed 5 per cent interest "from the 16th day of August, 1866, to March 1, 1899," and $186,000 was duly paid from the United States Treasury. Thus the total payment to the loyal Seminoles for their losses during the war has been made from the Government funds.

HOW THE INDIANS UNDERSTOOD IT.

David M. Hodge, interpreter; Isparhecher, ex-chief; Con-charti-micco, full blood; Gen. P. Porter, present chief; G. A. Alexander, Confederate army; L. C. Perryman, clergyman; Thomas Perryman, Union Army, all made affidavits which were submitted to the Senate Committee on Indian Affairs.

AT WORST ONLY AMBIGUOUS.

Rule of the Supreme Court: "Where a treaty admits of two constructions, one restrictive of the rights that may be claimed under it and the other liberal, the latter is to be preferred." (Havenstein *v.* Lynham, 100 U. S., 483-25; 628, in which case is also cited Shanks *v.* Dupont. 3 Peters, 242.)

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 209.

PETITION FOR PASSAGE OF LAW TO REGULATE SALE OF MILK AND CREAM IN DISTRICT OF COLUMBIA.

Mr. GALLINGER presented the following

PETITION OF THE DAIRYMAN'S ASSOCIATION OF THE DISTRICT OF COLUMBIA, MARYLAND, AND VIRGINIA, PRAYING THE PASSAGE OF A LAW TO REGULATE THE SALE OF MILK AND CREAM IN THE DISTRICT OF COLUMBIA; TO ACCOMPANY S. BILL 4635.

JANUARY 29, 1908.—Referred to the Committee on the District of Columbia and ordered to be printed.

THE DAIRYMEN'S ASSOCIATION,
DISTRICT OF COLUMBIA, MARYLAND, AND VIRGINIA,
Washington, D. C., January 28, 1908.

GENTLEMEN: The Dairyman's Association of the District of Columbia being in favor of a high standard of purity for milk and cream, and having committed itself to work for that object, do hereby petition that the accompanying bill may receive due consideration from your honorable committee, and that the same may be passed by Congress and become a law for the District of Columbia.

We respectfully request this because there is no sympathy or cooperation between the Dairyman's Association and the officer at present charged with the enforcement of the pure-food law.

Because ignorance and incompetency have marked the enforcement of the law relating to the sale of milk and cream, as is shown by the fact that the court recently declared that the inspector who was conducting the prosecution of cases before the court was utterly unqualified.

Not only has this incompetency caused us a loss of a good many dollars paid unjustly in fines, but our business has been injured by continuous publication in the papers that we were fined for selling adulterated milk and cream.

Because we believe that the present method of enforcing the law is a menace to the public health, in that bottles which have been washed in the laboratory where diphtheria germs are cultivated, and even on the same table where tubes containing diphtheria germs are washed, are brought into our dairies, thus rendering our milk supply liable to

infection. We believe that we should be safeguarded in this particular, and that the laboratory where the milk is examined should be entirely divorced from the health department.

Because the public utterances of the health officer, as published in the press, have been marked by animus rather than justice.

Because the laws are not equitably and impartially enforced, some dealers being prosecuted and others not for the same offense.

Because the failure to adopt proper methods for collecting samples at the station, in the few instances in which the same have been collected, renders any analysis of such samples of no value.

Because the failure to properly supervise the milk supply on its arrival at the stations causes the dairymen to bear the burden of any adulteration that may be practiced before said supply comes into his possession.

Because we believe that the enforcement of the law relating to milk and cream should be in charge of a practical man, one in whom we have confidence, and one whom we can assist and who will assist us in return.

We believe that the interests of every honest dairyman is promoted by stringent regulations, honestly enforced, but we do not believe that persecution or prosecution is the sole method to adopt for improving our milk supply.

We believe that we should have the right to have an analysis of samples of milk and cream made by the party who is charged with the enforcement of the law, and we are willing to pay a reasonable fee for that purpose.

We are now paying out over $1,000 a year to a private chemist for that purpose.

We believe that a superintendent of dairy products, who has a knowledge of chemistry and who is familiar with the practical side of the dairy business, is the proper party to have the enforcement of the law.

Where guilty we ask no leniency, but when not guilty we believe that we should have an opportunity to prove our innocence, which can not be done in a court of justice, but should be done by taking samples of milk at the station before it reaches us, and by honest cooperation on the part of the officer charged with the enforcement of the law.

Very respectfully submitted.

GEO. B. FARQUHAR,
President.

To the COMMITTEE ON THE DISTRICT OF COLUMBIA.

[S. 4635.]

A BILL To regulate the sale of milk and cream in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act it shall be unlawful for any person to sell, or offer for sale, or have in his possession with intent to sell, within the District of Columbia, any milk or cream which is adulterated within the meaning of this Act, and any person or persons violating any of the provisions of this Act shall be guilty of a misdemeanor and shall on conviction be punished, for the first offense, by a fine *of not less* than ten nor more than twenty-five dollars, to be collected as other

fines and penalties, or by imprisonment in the workhouse for a period of not more than thirty days, and for the second offense and each subsequent offense, by a fine of not less than twenty-five nor more than fifty dollars, or by imprisonment in the workhouse for a period of not more than ninety days, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That where it can be shown that the offense was committed by an employee, without the consent of the employer, the conviction of the employee shall operate as a release to the employer from all liability for the offense: *And provided further*, That no dealer shall be prosecuted under the provisions of this Act for the sale of any milk or cream, or for having the same in his possession with intent to sell, when he can establish conclusively that said milk or cream was in the same condition in which he received it, and that he had no knowledge, and the ordinary physical tests did not disclose the fact, that the same was not in accordance with the provisions of this Act.

SEC. 2. That for the purpose of this Act an article shall be deemed to be adulterated, in the case of milk, if it contains less than three and five-tenths per centum of butter fat, or more than eighty-seven and five-tenths per centum of water, or if it is unwholesome, or derived from cows that have been fed on swill, garbage, or other like substances, or if it has had anything added to or removed therefrom; and in the case of cream if it contains less than eighteen per centum of butter fat, or if it is unwholesome, or is not derived directly from milk without the addition of any foreign substance whatsoever; and in the case of skimmed milk, if it contains less than nine per centum of total solids, or if it is unwholesome, or if any foreign substance has been added thereto: *Provided*, That both milk and cream may be modified to meet the requirements and demands of the purchaser.

SEC. 3. That for the purpose of carrying out the provisions of this Act the Commissioners of the District of Columbia be, and are hereby, authorized to appoint a superintendent of dairy products, who shall be a practical chemist, experienced in the analyses of foods, and who has had some practical experience in the production of milk and cream. That the said superintendent of dairy products, together with the Secretary of Agriculture, or one of his duly appointed assistants, and one other person, to be appointed by the Commissioners of the District of Columbia, who at the time of the passage of this Act shall be an actual producer of milk and cream, or in lieu thereof shall have been a producer of milk and cream for a period of not less than five years, shall constitute a board of dairy control for said District.

SEC. 4. That it shall be the duty of the said board of dairy control, under the direction of the Commissioners of the District of Columbia, to make uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of samples of milk and cream offered for sale in the District of Columbia, or which may be brought or shipped into said District for the purpose of sale, and for the purpose of securing proper water supply, drainage, ventilation, air space, floor space, and the cleaning of all dairies, dairy farms, and dairy utensils within said District, said regulations to have the force and effect of law after approval and due publication by said Commissioners. The superintendent of dairy products shall receive a compensation of two thousand five hundred dollars per annum; the producer of milk and cream, as a member of the board of dairy control, shall receive compensation at the rate of ten dollars per day for services rendered, which sum shall not exceed five hundred and twenty dollars per annum.

SEC. 5. That it shall be the duty of the superintendent of dairy products to analyze samples of milk and cream collected as specimens of the same which are offered for sale in the District of Columbia; to examine regularly samples of the same collected at the railroad station, before passing into the hands of the dealers, and in case of a violation of any of the provisions of this Act, or of any of the rules and regulations promulgated under authority hereof, the superintendent of dairy products shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard by the board of dairy control, under the rules and regulations as may be prescribed as aforesaid, and if it appears to said board that any of the provisions of this Act have been violated by such party the superintendent of dairy products shall certify the facts to the attorney for the District of Columbia.

SEC. 6. That on the payment of a fee of one dollar to the collector of taxes of the District of Columbia for each specimen to be examined, the superintendent of dairy products shall examine, or cause to be examined, any specimen

of milk or cream submitted to him for the purpose by any dealer within said District in so far as may be necessary to determine whether or not the same is adulterated within the meaning of this Act, and all moneys so collected shall be deposited in the United States Treasury to the credit of the District of Columbia.

SEC. 7. That no person shall bring or send any milk or cream into the District of Columbia, or sell or offer for sale any such milk or cream within said District, without a permit so to do from the superintendent of dairy products; application for said permit to be on a form prescribed by said superintendent and to be issued only after compliance with the rules and regulations promulgated under authority of this Act: *Provided*, That no applicant for a permit to bring or send milk or cream into the District of Columbia shall be restrained from so doing until the said application shall have beeen duly acted upon by said superintendent: *And provided further*, That said permit may be suspended or revoked without notice by said superintendent whenever the milk supply from said dairy or dairy farm is exposed to any contagious disease so as to render its distribution dangerous to the public health.

SEC. 8. That for the purpose of determining whether or not said milk supply is exposed to infection from any contagious disease so as to render its distribution dangerous to the public health the board of dairy control is authorized to call upon the health officer of the District of Columbia for such aid and assistance as may be deemed necessary, and said health officer is hereby authorized to grant such aid and assistance as may not be incompatible with the proper discharge of the duties of his department.

SEC. 9. That the superintendent of dairy products, or his duly appointed assistants, shall have the right to enter without previous notice, for the purpose of inspection, any dairy or dairy farm within the District of Columbia within business hours.

SEC. 10. That all daries and dairy farms suplying any milk or cream to the District of Columbia shall be subject to the provisions of this Act: *Provided*, That all permits to maintain a dairy or dairy farm issued previous to the passage of this Act and now in force shall so continue in force unless said dairy or dairy farm shall be maintained contrary to the provisions of this Act, or of the rules and regulations prescribed under authority hereof.

SEC. 11. That all grocers, bakers, and other persons having or offering for sale any milk or cream shall at all times keep the name or names of the dairymen from whom the milk or cream on sale shall have been obtained posted up in a conspicuous place wherever such milk or cream may be sold or kept for sale.

SEC. 12. That no dealer in milk, and no servant or agent of such a dealer, shall sell, exchange, or deliver milk from which the cream or any part thereof has been removed, unless in a conspicuous place above the center or upon the outside of every vessel, can, or package thereof in which milk is sold the words "skimmed milk" are distinctly marked in gothic letters not less than one inch in length.

SEC. 13. That all money appropriated and available or appropriated and to become available for the enforcement of "An Act to regulate the sale of milk in the District of Columbia, and for other purposes," approved Marhc second, eighteen hundred and ninety-five, be, and the same is hereby, made available for the enforcement of this Act and of the regulations promulgated under authority thereof.

SEC. 14. That prosecutions under this Act shall be in the police court of the District of Columbia, or by one of his assistants.

SEC. 15. That all laws and parts of laws relating to the sale of milk and cream in the District of Columbia are hereby repealed.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 211.

PETITION FOR REDUCTION IN PRICE OF GAS IN DISTRICT OF COLUMBIA.

Mr. TILLMAN presented the following

PETITION OF CITIZEN ASSOCIATIONS IN THE DISTRICT OF COLUMBIA, PRAYING THE PASSAGE OF A LAW TO REDUCE THE PRICE OF GAS TO CONSUMERS IN THE DISTRICT.

JANUARY 29, 1908.—Referred to the Committee on the District of Columbia and ordered printed.

To the Congress of the United States:

The Commissioners of the District of Columbia recommend that Congress pass two measures relating to the gas business in the District. One is a joint resolution to suspend the operation of section 5 of the act of June 6, 1896, relating to the capitalization of gas companies. The other is a measure empowering the Commissioners to fix the price of gas, it being their purpose to reduce the price from $1, at which it is now fixed, to such figure as on investigation may be found reasonable.

There has also been introduced by Representative Madden, of Illinois, in the House of Representatives, a bill to reduce the price of gas to 75 cents.

Section 5 of the act of June 6, 1896, provides:

SEC. 5. That neither the Washington Gaslight Company nor the Georgetown Gaslight Company shall hereafter issue any greater number of shares of stock than shall be equal to the actual cash value of said plants and necessary cost of the construction of future extensions or future enlargements of plants, which cash value and cost of extensions shall first be ascertained and authorized upon petition therefor to the supreme court of the District of Columbia, under such regulations as the chief justice and the justices thereof shall prescribe; also if either of the said corporations shall desire hereafter to issue bonds upon their property, secured by mortgage or otherwise, upon petition therefor to said court, setting forth the necessity thereof and the amount of stock issued and outstanding, it may and shall be lawful for said court, or the chief justice and justices thereof, as the case may be, or one of them, upon public notice, to be prescribed by the rules of said court, to permit the issuance of such bonds and mortgages as desired: *Provided*, That the amount of stock and bonds issued shall not exceed the actual cash value of said plants and the cost of such extensions or enlargement of plants: *And provided further*, That the Washington Gaslight Company is hereby authorized to issue such additional amount of capital stock as will provide for the conversion into such stock of its outstanding certificates of indebtedness, which conversion of said certificates is hereby authorized to an amount not exceeding six hundred thousand dollars.

The reason for the importance of immediate action on the joint resolution suspending the foregoing section is that the Washington

Gaslight Company and the Georgetown Gaslight Company have instituted proceedings in the supreme court of the District of Columbia to have the valuation of their property determined, with a view to increasing their capitalization. In the case of the Georgetown company permission is asked to increase it from $150,000 to $300,000, while in the case of the Washington company no limit is named, and it is presumed that the corporation desires to make as large an increase as the court will permit on its finding of the valuation of the company's property.

In the case of the Georgetown company the court named a commissioner to inquire into the value of the property, and he found that it was worth far more than the $300,000 to which the company desired to raise its capital. It is therefore presumed that in this case the court will give permission for the increase to $300,000. In determining the valuation of the company's property the commissioner included a large item for franchise value, despite that it was urged that a public franchise which was given to the company, and which conveys a monopoly, ought not to be valued for capitalization; also a large item for working capital, despite that every gas consumer not a property owner is required to make a deposit of cash with the company before he can have the gas turned on. As these deposits with the Washington and Georgetown companies aggregate, according to the statements of the companies filed in accordance with law, about $500,000, it has been urged that the public is furnishing all the working capital necessary and that this item should not be capitalized.

The valuation made by the court's commissioner in the case of the Georgetown company practically granted the company everything its lawyers asked. It is therefore presumed that the same rule will obtain in the case of the Washington company. If this shall prove true, the court may be expected to authorize an increase of the capital of the Washington Gaslight Company to about three times its present figure.

Present capitalization of the Washington Company—stock, bonds, and certificates of indebtedness—aggregates $5,800,000. This is declared by competent authorities to be more than the property is worth. But as the attorneys for the District of Columbia have no means with which to secure competent and impartial expert testimony, the excessive showing of values made by the gas companies is likely to go uncontroverted, with the result that the court will authorize a vast issue of additional capitalization.

To increase the capital of the Washington Gaslight Company in the proportion that is alleged to be justified by the valuation made for the Georgetown company would mean to substitute a figure near $15,000,000 for the present capitalization of $5,800,000. That would mean, it is charged, that the gas business in Washington would be capitalized higher in proportion to the population supplied and the amount of gas produced than any other gas establishment in the country. It would mean that if this immense capitalization were once issued under authority of section 5, above referred to, there would be no hope of invalidating it, and the consumers of gas in Washington would be compelled for all time to pay prices predicated on the necessity of earning return on this immense capitalization—a capitalization that would not be represented by actual values in the *property.*

For these reasons the Commissioners of the District of Columbia have asked that section 5 be suspended by joint resolution, and have transmitted to Congress the draft of a resolution for that purpose, prepared by the corporation counsel of the District.

There is no evidence that the gas companies wish to use the proceeds of this vast capital for the purpose of extending or bettering their plants. Even if they had need for funds for such purposes, both companies have large surplus funds which should first be used. Why, then, do the companies want to increase their capital?

If they are not to extend or enlarge their plants, there is no good reason for the increase of the stock. Why such an increase of volume of stock if it is to be sold for the simple purpose of placing the proceeds in the treasuries of the companies? If the stock when issued is to be distributed gratuitously among the present stockholders of the respective companies, pro rata with their present stock holdings, for the ostensible purpose of enlarging the volume of stock so that the large profits earned by the companies may appear to be lessened by dividends, so that the companies may urge the small dividends as an argument and excuse for high-priced gas to consumers, the whole proceeding is a scheme or subterfuge and demands the prompt attention and investigation of Congress.

It appears that a bill (H. R. 11173) was introduced in the Fifty-seventh Congress, first session, authorizing this Washington Gaslight Company to purchase the Georgetown Gaslight Company, and for other purposes, for which the Committee on the District of Columbia recommended as a substitute therefor H. R. 13405, and upon which a majority report (H. R. 1469) and a minority report (H. R. 1469, part 2) were made. In both of these bills Congress was asked to authorize the company to change the par value of the shares of the capital stock from $20 to $100 par value, the new shares of stock to be allotted, when issued, to the stockholders of said company pro rata according to their holdings.

In the views of the minority (H. R. 1469, part 2), it is shown that the said company was organized July 8, 1848, with a capital of $50,000, $42,500 of which was paid in and $7,500 distributed to subscribers as a bonus. By May 24, 1868, the capital stock had increased to $500,000. On this subject it is interesting to read what Senator Spooner said in Senate Report No. 1460, Forty-ninth Congress, first session. In 1872 the capital stock of the company was again increased in the sum of $200,000. And in each year, beginning with 1873 and ending with 1883, the capital stock of the company was increased in some amount, making a total increase from 1873 to 1883 of $800,000. In 1894 the company had $600,000 of certificates of indebtedness outstanding, which had been distributed to stockholders, and represented earnings or dividends. Stock was issued to the holders of these certificates, as provided for in the act of 1896.

The bill (H. R. 13405), the object of which was to increase the capital stock of the company to $13,750,000 (H. Report 1469, part 2), was defeated in the House.

Notwistanding the action of the House of Representatives in refusing to pass House bill 13405 and the failure on the part of the Washington Gaslight Company to obtain from Congress the desired legislation to increase its capital stock, the company unlawfully proceeded, subsequent to the adjournment of the Fifty-seventh Con-

gress, and after its failure to procure the desired legislation of Congress, to create an alleged indebtedness by issuing $2,600,000 of certificates of indebtedness, bearing 6 per cent interest, being an amount equal to the capital stock of the company, and distributed and delivered the same to its stockholders as a bonus or gratuity, without any warrant or authority of law, or authority under its charter, for its act in the issuance of the certificates of indebtedness and the gratuitous distribution thereof to its stockholders. It also appears that a bill (S. 3042) was introduced in the Forty-eighth Congress, second session, "To amend an act relating to the sale of gas in the District of Columbia," the preamble to which is as follows:

> Whereas the Washington Gaslight Company of the District of Columbia has, without warrant of law, issued and delivered to the stockholders of said company a bonus of $2,600,000 for the purpose of absorbing the large surplus of earnings of said company.

The bill was referred to the Commissioners of the District of Columbia for report, and the following part of a paragraph is copied from the report of the Commissioners (Senate Report No. 2620):

> The Commissioners feel that an investigation of this character should be made by Congress rather than by the Commissioners. If conditions under which the so-called stock bonus of $2,600,000 mentioned in the preamble of the Senate bill 3042 was issued are to be made the subject of thorough inquiry, it will necessitate sending for persons, books, and papers. * * *
>
> The Commissioners have no power to compel the testimony of the necessary witnesses or the production of the necessary papers. * * *

The Commissioners made no report, therefore, other than as above stated, upon the matter contained in the preamble to the bill.

The majority report (H. R. 2620) of the committee is to the effect that the so-called stock bonus was in reality an issue of certificates of indebtedness, and it was upon this theory or representation, no doubt, that the opinions of counsel referred to therein were based. If it is true that the said certificates represent an actual indebtedness the fact is established that the Washington Gaslight Company had, since the passage of the act of June 6, 1896, up to the year 1903, when the certificates were issued, incurred an indebtedness of $2,600,000, an amount equal to its capital stock, or, calculating from the date of the act of June 6, 1896, to the date of the issuance of the bonus certificates of indebtedness in 1903, an incurrence of the company by an indebtedness of more than $375.000 annually during a period of seven years, which, considering the dividends paid by the company, and its continuous prosperous condition, prevents a preposterous claim which is not sustained by the facts and practically demonstrates that no such indebtedness existed as a basis for such certificates.

It is stated in the adverse report (No. 2620) on the bill (S. 3042) that the officers of the company stated that its capitalization (including the issue of certificates) is not more than 50 per cent of the actual value of the property. If this is so, there was no reason or justification in resorting to certificates of indebtedness in the manner in which they were issued and thrown on the stock market, practically taking the place in this respect of an additional issue of stock of the company.

If the company retained its cash earnings or surplus and issued the certificates of indebtedness to its stockholders in payment of dividends, its act was ultra vires upon the general principles of law, inasmuch as dividends can only be declared and paid out of the profits of *the business* (Thomp. on Cor., vol. 2, sec. 2152). If, on the other

hand, the company issued the certificates of indebtedness as a gratuity and gave them to its stockholders, or even issued them as representing a real indebtedness of the company, its act was equally ultra vires under the law of Congress.

In view of the minority on H. R. 13405 (Report 1469, part 2), will be found the following relative to the condition of the company and the payment of the dividends:

> The stockholders seem to have been as fortunate in the receipt of dividends as in the growth of their stock. It is not denied that the company paid a dividend of 55 per cent in 1874, 20 per cent in 1875, 65 per cent in 1876, and 15 per cent for each of the years 1878, 1879, 1880. The treasurer of the company stated, in a letter to Samuel J. Randall, dated February 25, 1881, that for "thirty-one and one-half years the average of cash and stock dividends has been 16.8 per cent." That year, 1881, 10 per cent dividend was paid; 1882, 10 per cent; 1883, 50 per cent; 1884, 10 per cent; 1885, 12½ per cent.
>
> In 1894 Mr. Heard, chairman of the District of Columbia Committee, reports the company as paying an annual dividend of 10 per cent, and having accumulated earnings undistributed amounting to $200,000. This, too, during the years when, according to their own testimony, the plant had been rebuilt and its capacity doubled.
>
> In response to inquiry of J. W. Babcock, on February 3, 1896, the company reports dividends paid for 1895 as $600,000, or a little more than 23 per cent, with a cash balance of $89,922.38 at the end of the year.

It is charged that the gas companies desire to make this increase in their capital in order that without appearing to pay excessive dividend rates they may dispose of the excessive profits their business earns under present conditions, and assure themselves of not having the price of gas reduced in the future.

The Washington Gas Company on December 4 transmitted to Congress the first annual report it ever made to that body. It showed for the year ended December 31, 1906:

Amount set aside and paid in interest	$179,948.00
Amount set aside and paid in dividends	260,000.00
Surplus	170,879.38
Total	610,827.38

This is over 10 per cent on the entire capitalization not outstanding—stocks, bonds, and certificates. The bonds and certificates, amounting to $2,800,000, draw only 6 per cent. The $2,600,000 of stock therefore earned $260,000 in dividends, or 10 per cent, and in addition there was a surplus of $170,000, equal to over 6 per cent on the stock; so that the company would appear to have earned the fixed charges on bonds and certificates, and, including dividends and surplus, over 16 per cent on its stock.

But this is not all. The report shows that the company in that same year paid from earnings $96,627.68 for extensions and improvements. Finally it lists this item:

Wages and salaries, not including wages charges in the distribution, works, expense, repairs, construction, meter, lamps, and other accounts	$206,247.40

This item is not explained in the report; the company seems to have paid over $206,000 in "wages and salaries, not including" nearly all the things for which "wages" would be paid—that is, it appears to have paid most of this sum in salaries. This appears an excessive salary list for so small a concern. That, in fact, the salaries of this company are excessive is shown by the statistics of the census of 1800, which showed the average salary of salary-earning officials of gas

companies in the District of Columbia was $2,161. The average salary of salaried officials of gas companies so high as in the District States was only $893. In no State in the Union was the average salary of salaried officers of gas companies so high as in the District of Columbia. (Census report on gas and gas works, 1907.) This seems to bear out the charge that excessive salaries absorb a large part of the business.

The liberality of the gas companies of the District of Columbia does not, however, extend to the point of wage-earning employees so well. The same census statistics show that the average wage of wage-earning employees of gas companies in the District of Columbia was $531, while the average for the United States was $550; in Massachusetts it was $577; in New York $683; in Rhode Island $579.

It is difficult to determine what is meant by the statements of the Washington Gaslight Company in its first annual report, to which reference has been made. The report appears to have been prepared for the purpose of giving as little information and causing as much confusion as possible. It is insisted by people who have made a study of it that it does not comply with the requirements of the law, passed by the Fifty-ninth Congress, requiring the company to make such reports.

The Commissioners of the District of Columbia have asked that they be given control of the price of gas, with power to fix it, and reference has been made to the fact that a bill to fix the price of gas at 75 cents is now pending in Congress. On the question of whether gas ought to be sold in Washington for less than the present price of $1, the following list of cities is given, in which it is sold at from 30 cents upward. In all cases artificial gas is referred to. In none is the price so high as $1. Few of the cities in the list have coal so cheap as Washington.

City.	Price.	Population.	City.	Price.	Population.
Los Angeles, Cal	$0.85	200,000	Duluth, Mich	$0.70	85,000
Pasadena, Cal	.85	22,000	Columbia, Mo	.60	8,000
Oakland, Cal	.90	150,000	St. Louis, Mo	.6080	700,000
Bridgeport, Conn	.90	87,000	Atlantic City, N. J	.90	40,000
Hartford, Conn	.75	90,000	Buffalo, N. Y	.95	.....
New Haven, Conn	.95	130,000	Batavia, N. Y	.95	9,000
Chicago, Ill	.85	.....	Kingston, N. Y	.75	25,600
Evansville, Ill	.97	70,000	West Point, N. Y	.75	2,200
Indianapolis, Ind	.90	225,000	Akron, Ohio	.30	60,000
Vincennes, Ind	.95	17,500	Bellefontaine, Ohio	a.75	9,000
Louisville, Ky	.75	320,000	Cincinnati, Ohio	.50	400,000
Dayton, Ky	.75	13,000	Cleveland, Ohio	.65	400,000
Bowling Green, Ky	.95	13,000	Dayton, Ohio	.85	95,000
Covington, Ky	.75	90,000	Delphos, Ohio	.99	6,000
Paducah, Ky	.95	15,000	Hamilton, Ohio	a.60	25,000
Baltimore, Md	.85	525,000	Ironton, Ohio	.90	13,000
Boston, Mass	.80	504,063	Middletown, Ohio	.80	12,000
Cambridge, Mass	.90	97,434	Steubenville, Ohio	.75	22,000
Charlestown, Mass	.90	60,000	Toledo, Ohio	.70	100,000
Dedham, Mass	.90	22,000	Warren, Ohio	.80	8,500
Lowell, Mass	.90	98,000	Washington, Ohio	.95	7,000
New Bedford, Mass	.90	74,362	Erie, Pa	.80	55,000
North Adams, Mass	.65	22,150	McKeesport, Pa	.98	40,000
Springfield, Mass	.95	85,000	Scranton, Pa	.90	115,000
Worcester, Mass	.90	130,000	Chattanooga, Tenn	.90	45,000
Fall River, Mass	.90	105,762	Barre, Vt	.75	13,000
Lynn, Mass	.90	90,000	Wheeling, W. Va	.75	40,000
Adrian, Mich	.60	12,000	Kenosha, Wis	.60	16,000
Delray, Mich	.80	25,000	Milwaukee, Wis	.60	335,500
Detroit, Mich	.80	325,000	Monroe, Wis	.70	3,000
Escanaba, Mich	.75	13,000	Racine, Wis	.60120	21,000
Grand Rapids, Mich	.90	102,000	Superior, Wis	.75	34,500
Port Huron, Mich	.80	22,000			

a Municipal ownership.

It is believed by advocates of the pending legislation, in view of the facts that have been stated, that a considerable reduction in the price of gas would be reasonable, and would leave the gas companies ample revenue to pay a fair profit; that section 5 of the act of June 6, 1896, must be repealed or suspended promptly if the gas companies are to be prevented from carrying out their plans to increase their capital; that these companies are now capitalized for all their property is reasonably worth, and that if the plans for increasing their capital are allowed to be carried into effect, the chance of reducing the price of gas will be practically destroyed.

D. J. PARTELLO,
Secretary Petworth Citizens Association.
W. P. ARMSTRONG,
President North Washington Citizens Association.
CHARLES S. BUNDY,
President Columbia Heights Citizens Association.
W. B. TODD,
Secretary Columbia Heights Citizens Association.
ALBERT F. WOODS,
President Takoma Park Association.
A. G. HERRMANN,
President Southeast Washington Citizens Association.
HARRY E. GLADMAN,
Secretary Southeast Washington Association.
F. L. SIDDONS.
JAS. W. DYRE,
Secretary Takoma Park Citizens Association.
JAMES M. WOOD,
Secretary East End Suburban Citizens Association.
J. D. KIEFER,
Secretary North Washington Citizens Association.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 217.

JOHN H. BAKER.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF JOHN H. BAKER AGAINST THE UNITED STATES.

FEBRUARY 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 1, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 10906. John H. Baker v. The United States.]

STATEMENT OF CASE.

On June 27, 1902, by resolution of the United States Senate there was referred to this court Senate bill No. 4902, Fifty-seventh Congress, for findings of fact under the terms of section 14 of the act approved March 3, 1887. Said bill reads as follows:

A BILL For the relief of John H. Baker.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to John H. Baker, formerly of Rockingham County, Virginia, now of Mulhall, Oklahoma, the sum of one thousand five hundred and seventy-nine dollars and ninety-one cents, in full compensation for stores and supplies taken for the use of and used by the Federal forces during the late civil war.

The case was brought to a hearing on loyalty and merits on the 10th day of April, 1907.

Moyers & Consaul appeared for the claimant, and the Attorney-General, by Malcolm A. Coles, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes the following allegations:

That he is a citizen of the United States, now residing in the county of Clark, State of Kansas; that during the late civil war was a citizen of the United States, and was

residing until May, 1862, in the county of Shenandoah, State of Virginia, at which time petitioner went north and resided in the State of Iowa until after the close of said war.

That during said war petitioner furnished to the United States military forces stores and supplies of the kinds and values below stated, to wit:

Furnished Col. Dudley Donnelly, Twenty-eighth New York Infantry, commanding a brigade, near Strasburg, Va., on May 22, 1862:	
6 boxes manufactured tobacco, 576 pounds, at 33⅓ cents	$192.00
5 boxes manufactured tobacco, 480 pounds, at 35 cents	168.00
4 boxes manufactured tobacco, 430 pounds, at 75 cents	322.00
5 boxes manufactured tobacco, 380 pounds, at 65 cents	247.00
4 boxes manufactured tobacco, 253 pounds, at 95 cents	240.35
2 boxes manufactured tobacco, 200 pounds, at 25 cents	50.00
1 box manufactured tobacco, 100 pounds, at 33⅓ cents	33.33
2 boxes manufactured tobacco, 200 pounds, at 75 cents	150.00
¾ box manufactured tobacco, 105 pounds, at 20 cents	21.00
½ box manufactured tobacco, 56 pounds, at 32 cents	17.92
½ box manufactured tobacco, 42 pounds, at 42 cents	17.64
½ box manufactured tobacco, 21 pounds, at 30 cents	6.30
1 box cigars	3.25
Taken June, 1862, by troops under command of Gen. John C. Fremont, at Maurertown, Va.:	
1 lot of tobacco	125.00
Total	1,793.79

That petitioner presented his claim for compensation for said property so taken and furnished, together with other property, to the Southern Claims Commission, established under the act of March 3, 1871; that said Commission found petitioner to have been loyal to the United States Government and allowed petitioner for those items of his claim other than tobacco.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Throughout the late civil war the petitioner, John H, Baker, remained loyal to the Government of the United States.

II. During said war the military forces of the United States, under the command of Col. Dudley Donnelly, Twenty-eighth New York Infantry, took from the claimant in Shenandoah County, Va., tobacco of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of seven hundred and ninety dollars ($790), no part of which appears to have been paid.

III. A claim embracing the tobacco herein claimed for was presented by the claimant to the Southern Claims Commission, and by said Commission allowed except as to said tobacco. Subsequently the claim was referred to this court by the United States Senate under the act of March 3, 1887, as hereinbefore mentioned. The claim so allowed, except the tobacco, was paid, and the only claim embraced in this reference is for the tobacco.

BY THE COURT.

Filed April 22, 1907.
A true copy.
Test this 30th day of January, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 218.

GEORGE SEYMOUR ET AL.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF GEORGE SEYMOUR ET AL. AGAINST THE UNITED STATES.

FEBRUARY 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 1, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 10255. George Seymour et al. v. United States.]

STATEMENT OF CASE.

The following bill was referred to the court on the 31st day of May, 1900, by resolution of the United States Senate under an act of Congress approved March 3, 1887, known as the Tucker Act:

["S. 4835, Fifty-sixth Congress, first session.]

"A BILL For the relief of George Seymour and others.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay George Seymour and other colored teamsters and laborers, or their heirs or their widows, out of any money in the Treasury not otherwise appropriated, all money deducted, by reason of the instruction of the Secretary of War, communicated in a letter dated September twenty-seventh, eighteen hundred and sixty-two, from the wages of George Seymour and other colored teamsters and laborers, and expended for the benefit of the women and children in the District of Columbia during the civil war."

The claimants appeared and filed their petition in this court September 12, 1900, in which they make the following allegations:

That they are citizens of the United States residing in Virginia, Maryland, and the District of Columbia, and throughout the civil war were loyal to the Government of the United States; that they were employed as teamsters and laborers by the United States during said war; that $5 per month was deducted from their salaries during their employment, pursuant to instructions from the Secretary of War, which moneys were applied to the support of aged, destitute, and infirm ex-slaves, some of said money being used for hospital purposes; that by reason of such illegal deductions said claimants are entitled from the Government to the sum of $240 each.

The case was brought to a hearing on merits on the 23d day of May, 1904, Joseph H. Stewart, esq., appearing for the claimant, and the Attorney-General, by George M. Anderson, esq., his assistant and under his direction, appearing for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. That George Seymour was employed as a colored laborer at Alexandria, Va., from June 1, 1863, to April 30, 1865. From June 1, 1863, to November 27, 1863, said Seymour was paid at the rate of $25 per month and one ration a day; and from December 1, 1863, to April 80, 1865, at the rate of $30 a month and one ration a day. From the 1st of October, 1864, to the 30th of April, 1865, there was deducted from the wages of the said Seymour the sum of $33.85 as a "contraband tax."

II. That Joseph Whiting was employed as a colored laborer at Alexandria, Va., from September 1, 1862, to April 30, 1864, and as messenger from June 30, 1864, to January 31, 1866, and as cook from February 1, 1866, to July 31, 1866. From September 1, 1862, to November 27, 1863, the said Whiting was paid at the rate of $25 a month and one ration a day; and from December 1 to April 30, 1864, and from July 1, 1864, to July 31, 1866, at the rate of $30 a month and one ration a day. From the wages of the said Whiting from February 1, 1866, to July 31, 1866, there was deducted the sum of $30 as a "contraband tax."

III. The above deductions were made in pursuance of an order from the Secretary of War, dated September 27, 1862, which is as follows:

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, September 27, 1862.

SIR: The Secretary of War is informed that a large number of colored men are employed in this District and in Alexandria, as teamsters and laborers, at the rate of $25 per month and a ration to the former, and $20 and a ration to the latter.

In view of the fact that the Government is supplying several hundred women and children of the same class who are unable to find employment, and also furnishes medical care, support, and attendance to the sick and helpless, the Secretary directs that you cause $5 per month to be deducted from the pay of the said colored teamsters and laborers in the Quartermaster's Department, to be paid over to a commissioner, who will be appointed by the Secretary of War, and who will expend the fund thus accruing for the benefit of the women and children, and as a hospital fund for the sick among the men from whom it is derived.

I am, sir, etc.

L. THOMAS, *Adjutant-General.*

Brigadier-General MEIGS, *Quartermaster U. S. Army.*

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, December 13, 1862.

Copy respectfully referred to the Commissary-General of Subsistance, who will carry out the same measures in regard to colored men employed in the subsistance department.

By order of the Secretary of War.

For these purposes the sum of $92,527.51 was received from Capt. C. B. Ferguson and Capt. J. G. C. Lee, acting quartermasters at Alexandria, Va., and other sums from other officers.

There is nothing to show how much was expended for a hospital fund for the benefit of the sick among the men, or how much was expended for the benefit of destitute colored women and children in the cities of Alexandria, Va., and Washington, D. C.

IV. No facts appear bearing upon the question whether the bar of any statute of limitation should be removed, or that excuse the claimants for delay in presenting their claim

BY THE COURT.

Filed May 31, 1904.
A true copy.
Test: This 29th day of January, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 219.

MARIE JOSEPHINE LE SASSIER, ADMINISTRATRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF MARIE JOSEPHINE LE SASSIER, ADMINISTRATRIX OF ESTATE OF FRANCOIS MEUILLON, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, January 31, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11860. Marie Josephine Le Sassier, administratrix of estate of Francois Meuillon, deceased, *v.* The United States.]

STATEMENT OF CASE.

On March 3, 1905, the United States Senate by its resolution referred to this court Senate bill No. 6506, Fifty-eighth Congress, for relief of estate of Francois Meuillon, for findings of fact under the terms of the act approved March 3, 1887. Said bill reads as follows:

A BILL For the relief of the estate of Francois Meuillon, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to the estate of Francois Meuillon, deceased, late of Saint Landry Parish, Louisiana, the sum of seventeen thousand two hundred and sixty dollars, in full compensation for stores and supplies and property taken for the use of and used by the Federal forces during the late civil war.

The case was brought to a hearing upon loyalty and merits on the 9th day of December, 1907.

Moyers & Consaul appeared for claimant, and the Attorney-General, by Franklin W. Collins, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes the following allegations:

That she is a citizen of the United States and a resident of the parish of St. Landry, State of Louisiana; that she is the duly appointed, qualified, and acting administratrix of the estate of Francois Meuillon, deceased, late of said parish and State.

That during the late civil war said Francois Meuillon, a free man of color, resided in said parish and State; that during said war the United States military forces, under proper authority, took from said Francois Meuillon quartermaster stores, commissary supplies, and property of the kinds and values below stated, to wit:

Taken by command of General Banks, in April, 1863, from farm of decedent, at Leonville, about 9 miles southeast of Opelousas:

15 horses, at $100 each	$1,500
3 mules, at $100 each	300
3,200 bushels of shelled corn, at 75 cents per bushel	2,400
12 cows, at $25 each	300
8 young cattle, at $10 each	80
12 work oxen, at $30 each	360
150 sheep, at $4 per head	600
6 large hogs, at $10 each	60
14 shoats, at $5 each	70
72 cords cypress fencing, at $3 per cord	216
2½ tons fodder and hay, at $20 per ton	50
20 bales of cotton, at $192 per bale	3,840
Total	9,776

The court, upon the evidence and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. Francois Meuillon, deceased, who was a free man of color, was loyal to the Government of the United States throughout the late civil war (Howry, J., dissenting).

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took from claimant's decedent, in the parish of St. Landry, State of Louisiana, property of the kind and character described in the petition other than cotton, which was then and there reasonably worth the sum of two thousand eight hundred and ten dollars ($2,810), no part of which appears to have been paid.

III. The evidence is not sufficient to establish to the satisfaction of the court that the cotton claimed for was taken and used by the Union forces, nor does it appear that the same was seized by a Treasury agent or other officer and sold and the proceeds covered into the Treasury of the United States.

IV. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore mentioned, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy, except that the claimant's decedent was a colored man who used the French language and was unable to speak English.

BY THE COURT.

Filed January 6, 1908.

A true copy.

Test this 30th day of January, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 222.

JUDGMENTS IN INDIAN DEPREDATION CLAIMS IN FAVOR OF CLAIMANTS.

LETTER

FROM

THE ATTORNEY-GENERAL,

TRANSMITTING

A LIST OF JUDGMENTS IN INDIAN DEPREDATION CLAIMS IN FAVOR OF CLAIMANTS REQUIRING AN APPROPRIATION.

FEBRUARY 5, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, February 4, 1908.

SIR: In compliance with the following resolution of the Senate, under date of February 3, 1908:

Resolved, That the Attorney-General be directed to transmit to the Senate a list of judgments rendered by the Court of Claims in favor of claimants in Indian depredation cases, requiring an appropriation by Congress, not heretofore reported.

I am directed by the President to transmit herewith a list of judgments rendered by the Court of Claims in favor of claimants in Indian depredation cases, requiring an appropriation by Congress, not heretofore reported.

Respectfully,

CHARLES J. BONAPARTE,
Attorney-General.

The PRESIDENT OF THE SENATE.

List of judgments in Indian depredation claims in favor of claimants.

In whose favor rendered.	Amount claimed.	Amount of judgment.	Date of judgment.
Elmer E. Veeder, administrator, Manuel Ulibarri, deceased	$265.00	$115.00	Mar. 4, 1907
G. A. McCall, administrator, Maria E. Marshall, deceased	400.00	210.00	Apr. 29, 1907
A. L. Dodd, administrator, John Darling, surviving partner of the firm of Kennedy & Darling	3,100.00	2,990.00	May 13, 1907
Severo Montez	100.00	100.00	Oct. 28, 1907
C. W. Gurley, executor, Joseph T. Gurley, deceased	225.00	145.00	Do.
Will N. Terry, administrator, Theodore Terry, deceased	600.00	550.00	Do.
Watson Houtz	610.00	475.00	Nov. 4, 1907
Walter Isbell, administrator, John B. Kearby, deceased	2,100.00	1,080.00	Nov. 11, 1907
Edward Payne, administrator, William T. Sampson, deceased	730.00	210.00	Do.
Felipe Martin	358.00	185.00	Do.
Charles Primeau	51,597.00	7,350.00	Dec. 2, 1907
J. Goodlow Neelly, administrator, Thomas J. Fleming, deceased	300.00	155.00	Do.
John C. Lynch	14,990.00	3,640.00	Do.
E. L. Ramsey, administrator, Samuel H. Allen, deceased; and George J. Watson, administrator, J. L. Allen and J. P. Allen, deceased	2,125.00	750.00	Do.
George F. Hinds, surviving partner Lowe & Hinds	6,750.00	3,100.00	Do.
Henry Y. Black	3,570.00	1,945.00	Do.
J. Yrissari, administrator Juan Cristobal Armijo, deceased	70,400.00	17,780.00	Dec. 9, 1907
Samuel B. Raney	850.00	160.00	Do.
Josefa G. Rounsville, administratrix Rafael Whittington, deceased	3,330.00	750.00	Do.
Thomas D. Heard	200.00	150.00	Do.
Winey Keaner	500.00	240.00	Do.
Wiley R. Schrier	545.00	360.00	Do.
Emily Kirby, widow and survivor in community of W. R. Terry, deceased	625.00	230.00	Do.
John H. Noakes	350.00	120.00	Do.
Paz Chavez de Trujillo	2,050.00	1,330.00	Do.
John R. Wilson	18,750.00	8,100.00	Jan. 6, 1908
Charles P. Vance	350.00	125.00	Do.
William F. Grimmett	2,775.00	1,800.00	Do.
Rufus C. Holland	2,825.00	1,534.00	Do.
Lucella D. Williams, administratrix William S. Berry, deceased	3,000.00	370.00	Do.
Mauricio Valdez, administrator Jesus Maria Valdez, deceased	350.00	290.00	Do.
William A. Edgin	75.00	75.00	Jan. 13, 1908
David C. Leuty, administrator Ellen Wilson, deceased	2,775.00	1,740.00	Do.
Fritz R. Leifeste	175.00	105.00	Jan. 20, 1908
Total	197,745.00	58,259.00	

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 223.

CLAIM OF THE CHINA AND JAPAN TRADING COMPANY, LIMITED, UPON THE BOXER INDEMNITY FUND.

Mr. KEAN presented the following

MEMORIAL OF THE CHINA AND JAPAN TRADING COMPANY, LIMITED, OF NEW YORK, IN SUPPORT OF SENATE BILL 4449 AND HOUSE BILL 15353, FOR THE RELIEF OF SAID COMPANY.

[Supplemental to its memorial of January 27, 1908, S. Doc. No. 202, Sixtieth Congress, first session.]

FEBRUARY 5, 1908.—Referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialist respectfully requests that such an amendment may be made to the pending joint resolution, authorizing the President to return the unappropriated balance of the Boxer indemnity fund to China (S. R. 23), as will secure a reexamination of your memorialist's claim upon these moneys, and payment of any further allowance which may hereafter be made as a result of such a proceeding, without interference with the proposed remission of the unappropriated balance to the Chinese Government. We do not ask the Congress to make such a reexamination of the company's claim itself, or by any of its committees, but to provide that it shall be made in such a manner and under such conditions as may seem proper, and that a sum sufficient be retained to abide the event.

The Government of China, having been held responsible by the intervening Powers for the damages caused by the Boxer uprising in 1900, and having admitted its responsibility, agreed subsequently to pay to the intervenors a lump sum of 450,000,000 haikwan taels ($333,900,000), payable in 39 annual installments, with interest at the rate of 4 per cent per annum from January 1, 1902, by way of "equitable indemnities for governments, societies, companies, and private individuals." The question of China's liability was thus finally settled, and an ample fund provided for paying the resulting damages.

The portion of this lump sum of $333,900,000 allotted to the United States was $24,440,778.81, on account of which our Government has received (principal and interest), $6,518,034.75. The President has requested authority from the Congress to release China from the payment of all but $11,655,492.69 of the $24,440,778.81 so allotted—the amount proposed to be retained being intended to cover the military and naval expenses of the United States in the relief expedition, estimated at $9,655,492.49, and the round sum of $2,000,000 already paid

by the Department of State upon the individual claims of our citizens, including merchants, missionaries, and others for damages suffered by them during the Boxer uprising. (Memorandum of State Department printed in Congressional Record of January 15, 1908, No. 22, p. 766.)

The allowances on the bulk of the private claims ($1,514,292.80) comprised in the aforesaid $2,000,000 were made upon examination of the evidence by the second secretary of the United States legation at Pekin (Mr. Bainbridge), and the consul-general at Tientsin (Mr. Ragsdale), subject to approval by our minister to China (Mr. Conger), and revision by the Department of State. Allowances on other private claims, amounting to nearly $500,000, were made directly by the Department of State.

THE FUND IS IN THE CONTROL OF CONGRESS.

No individual or other claims were adjudicated or liquidated by any proceedings between the Powers and China as a basis for the ascertainment of the amount of the gross indemnity of $333,900,000, for the payment of which the Chinese Government gave its bond as aforesaid in compliance with the final protocol.

By the practice of nations the distribution of a lump sum, so paid, rests entirely in the discretion of the government to whom the payment is made. Of course, the government receiving the funds is morally bound to see that the purpose for which such payment was exacted is effectuated as far as possible. The express purpose of this transaction was to provide "equitable indemnities," which, according to the Department of State, were to be "fully and substantially compensatory" for actual losses and expenses caused by the Boxer uprising.

The case is different where an award is made on each separate claim by a mixed commission or in some other form of international arbitration. There the awards are judgments, belonging to the individual claimants in whose favor they are rendered, and must be paid as stipulated in the submission between the sovereign parties.

The nature of the control which is exercised by the Government, to whom a lump sum is paid in such an international transaction, is illustrated in the disposition which was made of the Geneva award ($15,500,000) by the United States, through the Court of Alabama Claims, under various acts of your honorable body.[a] Before the final distribution of the fund, allowances were made to individuals and companies for expenses belonging to classes of "indirect claims" which the arbitral commission at Geneva had rejected. As already stated, the claims of individual citizens of the United States upon the Boxer indemnity have not been examined or adjudicated in any formal, systematic, or judicial proceeding. We submit that the China and Japan Trading Company, having a claim of such magnitude (about $500,000), connected as it is with such an unprecedented transaction as that between China and the powers, and so important to the company's welfare, is entitled to a rehearing such as the Congress provided for in

[a] 1874, June 23, Ch. 459, 18 Stat. L., pp. 245–249; 1875, Dec. 24, Ch. 1, 19 Stat L., p. 1; 1876, Feb. 15, Ch. 9, 19 Stat. L., p. 3; 1876, March 6, Ch. 20, 19 Stat. L., p. 6; 1876, April 11, Ch. 55, 19 Stat. L., p. 32; 1876, July 22, Ch. 225, 19 Stat. L., p. 96; 1882, June 6, Ch. 195, 22 Stat. L., pp. 98, 99; 1884, June 3, Ch. 62, 23 Stat. L., p. 33; 1886, June 2, Ch. 416, 24 Stat. L., p. 77.

the claim of Atocha,[a] which had been rejected by the board of commissioners under the treaty of Guadalupe Hidalgo (8 Ct. Clms., 427), and also in the Caldera claims, arising under the treaty of 1858 with China (15 Ct. Clms., 516).[b]

Especially should such a rehearing be granted by your honorable body in view of the fact that certain allowances were made to the company by Messrs. Bainbridge and Ragsdale, and afterwards increased by the Department of State, upon principles which seem to require that allowances for other similar expenses should be made; and also in view of the fact that certain elements of actual loss and damage which were not allowed to the company were allowed to another class of claimants whose rights and equities seem to your memorialists to have been no different from theirs in principle.

NATURE OF THE GOVERNMENT'S OBLIGATON.

Referring to the Alabama award, the Supreme Court of the United States said:

> It was held in United States *v.* Weld (127 U. S., 51) that this award was made to the United States as a nation. The fund was at all events a national fund, to be distributed by Congress as it saw fit. * * * While * * * there was no means of compelling Congress to distribute the fund * * * and while the claimant was remediless, * * * nevertheless, there was at all times a moral obligation on the part of the United States to do justice to those who had suffered in property. (Williams *v.* Heard, 140 U. S., 529.)

So in the case of Rustomjee *v.* The Queen (L. R. 1 Q. B. Div., 487, and L. R. 2 Q. B. Div. 69) Lord Chief Justice Coleridge said:

> We do not doubt that on the payment of the money by the Emperor of China there was a duty on the part of the English sovereign to administer the money so received according to the stipulations of the treaty. But it was a duty to do justice to her subjects according to the advice of her responsible ministers; not the duty of an agent to a principal, or of a trustee to a cestui que trust.

On this point Mr. Justice Blackburn said:

> I think there is a moral claim that it be given to the right person, which must be investigated in the manner in which Her Majesty is pleased to direct and the ministers who direct it would probably be responsible in Parliament if they did it unjustly.

ON WHAT PRINCIPLES ALLOWANCES SHOULD BE MADE.

THE REHEARING IN THE "CALDERA" CASES.

Although two learned justices (the late Chief Justice Richardson and Justice J. C. Bancroft Davis) dissented from the judgment of the Court of Claims, allowing what the board of commissioners had disallowed in the "Caldera" cases, under the treaty of 1858 with China, and the act of Congress of 1859,[c] it was not because they had any doubt as to the liberality and essential justice and freedom from technicalities of the principles which should govern the examination and settlement of such claims, as the following from the dissenting opinion of Mr. Justice Davis will show:

> In the means by which justice is to be attained, the court is freed from the technical rules of evidence imposed by the common law, and is permitted to ascertain

[a] Act of February 14, 1865, 13 Stat. L., 595.
[b] Act of June 19, 1878, 20 Stat. L., 171, 172.
[c] Act of March 3, 1859, 11 Stat. L., 408.

truth by any method which produces moral conviction. This proposition is self-evident. Evidence, in its narrow and technical sense, is a machine for the discovery of truth, fettered and restrained by municipal law and by local regulations, which vary greatly in different countries. In its wider and universal sense it embraces all means by which any alleged fact, the truth of which is submitted to examination, may be established or disproved. (1 Green. Ev., 1.) International tribunals are not bound by local restraints. They always exercise great latitude in such matters (Meade's case, 2 C. Cls. R., 271), and give to affidavits, and sometimes even to unverified statements and letters the force of depositions. * * * They might also be obliged when proof was lost to estimate losses from general facts within their own knowledge. Congress gave them the right to do this, so that no one in the American colony, where the work was to be done, should suffer from technicalities. (Hubbell et al. *v.* United States, 15 Ct. Clms., 606.)

So in the Meade case (2 Ct. Cls., 224), Mr. Chief Justice Casey, delivering the opinion of the court and referring to the rejection of the claim by the board of commissioners appointed under the treaty with Spain and an act of Congress, observed (p. 271):

Most of the difficulties that have attended this case originated in what we deem a mistake of the commissioners. They applied the strict rigid rules of evidence that belong to the administration of municipal or criminal justice in the adjustment of these international affairs to which they were inappropriate.

The engagements of nations, the adjustments of their claims upon each other, or those of their respective citizens and subjects should not, and for obvious reasons can not, be subjected to the narrow technical rules of ordinary tribunals.

An executive international agreement, such as that between China and the powers, providing as it did for the payment of "equitable indemnities," should be, like a treaty, construed liberally. The "equitable indemnities" were intended to equitably indemnify the sufferers, and not to be returned to China while an American firm was actually out of pocket half a million dollars for losses and expenses incurred as a direct result of the antiforeign outbreak for which China had acknowledged her responsibility and provided the means of reparation exacted by the powers.

Where a treaty [says the Supreme Court of the United States] admits of two constructions, one restrictive as to the rights that may be claimed under it and the other liberal, the latter is to be preferred. (Shanks *v.* Dupont, 3 Peters, 242.) Such is the settled rule of this court. (Hauenstein *v.* Lynham, 100 U. S., 483, 487.)

So in the case of The Choctaw Nation *v.* The United States (119 U. S., 28), the Supreme Court said:

The rules to be applied in the present case are those which govern public treaties, which, even in cases of controversies between nations equally independent, are not to be read as rigidly as documents between private persons governed by a system of technical law, but in the light of that larger reason which constitutes the spirit of the law of nations.

THE COMPANY'S CLAIM—ITS NATURE AND AMOUNT.

The company's claim as originally presented was for $559,285.48. A supplemental claim, comprising advances made to Chinese merchants to enable them to keep their contracts, was afterwards filed for $5,493.72, but disallowed as being a voluntary payment or gratuity. This amount of $559,285.48 comprised losses and expenses caused by the enforced detention of the company's goods at Shanghai, owing to the Boxer uprising, and was made up as follows:

(1) Extra storage while the goods were detained at Shanghai	$47,186.77
(2) Fire insurance during such detention	16,272.46
(3) Loses from depreciation on sales	239,775.49

(4) Interest actually paid for carrying the goods, against the shipments of which by custom of the trade, drafts had been drawn on the bills of lading, renewals of which were necessary till the proceeds of sales were realized		$256,050.76
Making in all		559,285.48
On October 15, 1902, Mr. Bainbridge and Mr. Ragsdale recommended the allowance of the fire insurance paid and part of the storage amounting to	$45,695.00	
Together with interest on said sum from May 1, 1901;[a] and the disallowance of the remainder.		
Subsequently the Department of State, upon proof that the balance of the storage was disallowed because of a misunderstanding of the facts, allowed the same, amounting to	17,917.74	
Together with interest on said sum.[a]		
Making paid in all		63,612.74
And leaving unpaid of the claim		495,672.74

This loss of $495,672.74 was caused directly by the Boxer uprising and the company has no remedy except from the indemnity paid by China to the United States.

HISTORY AND BUSINESS OF THE COMPANY.

As successor of Messrs. H. Fogg & Co., an American house established in business at Shanghai in or about the year 1847, the company began, about forty years later, to import into China cotton cloth, called "piece goods," chiefly from the United States. This business grew to such large proportions that at the time of the Boxer outbreak, in the month of May, 1900, the company had cotton piece goods in port and arriving at Shanghai to the value of Shanghai taels 2,609,767.88. In the ordinary and regular course of trade all of these goods would have been taken on their arrival by the Chinese merchants, for sale in the interior, without delay. There was for all such goods a steady and growing demand. They were of the kind regularly purchased in Shanghai by Chinese merchants, and, according to the custom of the trade, forwarded by the purchasers through the ports of Tientsin and Newchwang to the interior of the north of China. There was no reason to suppose that the active demand existing for goods of this character would not continue throughout the year 1900, as it had done on an increasing scale up to that time. The quantity and amount in value of such goods did not exceed the regular demands of trade.

Immediately upon the Boxer outbreak, in the month of May, 1900, it became impossible to move the goods out of Shanghai, and all negotiations for their purchase were dropped by the native merchants, and the company was compelled to hold its importations until the markets

[a] The allowance of interest on the sums allowed is according to international practice. Interest was allowed by the Geneva tribunal. Mr. J. C. Bancroft Davis, who was agent of the United States in that arbitration, says in his notes on the Treaties to which our Government has been a party (ed. 1889, p. 1229):

"The general principle of the public law is that interest is a necessary part of a just national indemnification."

Mr. Webster, in his opinion annexed to the Senate report in the case of Letitia Humphreys (Sen. Doc. No. 93, 36th Cong., 1st sess., observed:

"It is the interest of the United States as a commercial nation, with property exposed to violence in every part of the world, to resist any change of the rule of the public law which prescribes as the measure of indemnification for injuries to property, the restoration of its original value, together with compensation for the loss of its use."

in the north of China, for which these piece goods were intended, and in which only they could be sold, were opened again to trade by the suppression of the antiforeign outbreak. There was no trade whatever out of Shanghai until March, 1901, and goods did not begin to move in usual volume until the month of June, 1901. The company's importations were finally sold at a serious loss to Chinese merchants and by them forwarded to the north China markets.

From the time of arrival of these goods at Shanghai, after the Boxer outbreak and the consequent stoppage of all business out of that port, they were held stored in Shanghai by the company until they were sold and delivered.

The company used every means in its power to make an early sale of these importations. It carefully considered the question of reshipment, but was unable to find any other market where such goods could be sold at a reasonable price, for they had been manufactured solely with reference to the requirements of the North China trade, and were unsuitable for the other markets investigated and considered, or any market known to the company. The Boxer outbreak physically and entirely closed the channels of importation from Shanghai through Tientsin and Newchwang to the interior of the country, as aforesaid, and further destroyed the market for such goods. The Boxer movement was expressly directed against foreigners and foreign goods, and it was one of its purposes to prevent the importations of foreign merchandise into China.

It thus appears that these goods, which were in port or "afloat" in May, 1900, were practically embargoed at Shanghai from the time of their arrival until the Boxer uprising was suppressed. Messrs. Bainbridge and Ragsdale made an allowance for the actual expenses of extra storage caused by the breaking up of communications with the interior, but disallowed the payments of interest which were actually made by the company for the renewal of the drafts which were drawn against the bills of lading for the various shipments, and which had previously been taken up in the usual course of business, without renewals, from the proceeds of sales. The commissioners also disallowed the losses caused by the lower prices at which the goods so embargoed had to be sold when the market reopened at the close of the Boxer troubles.

DISCRIMINATION AGAINST THE COMPANY.

Both of these items, however (interest actually paid for carrying the goods and losses from depreciation in salable value), were allowed by the commissioners to those merchants who had sent their merchandise (including cotton piece goods) into China upon orders or contracts for sale obtained before shipment. The allowances that the commissioners and the State Department made to the company for unusual expenses of storage and fire insurance were doubtless made on the theory that the goods were practically embargoed at Shanghai as a direct result of the Boxer uprising, which interrupted the usual communications between the ports and the interior where such goods were sold. But it is clear that these expenses for storage were no more directly a result of the Boxer uprising than the payments of interest which were made necessary by the very same embargo or detention of the goods at Shanghai. The detention necessitated the storage, and the detention (preventing

the sale of the goods) necessitated a renewal of the drafts which, but for the interruption of communication caused by the Boxer uprising, would have been paid from the proceeds of sales as usual.

On what principle the commissioners, in an equitable proceeding such as this was and had been expressly declared to be, could allow payments for storage and disallow payments for interest, both being made necessary by the same cause, it is not easy to see. Nor is it clear why the commissioners should allow payments of interest to the merchants who had contracts for the sale of their merchandise, the fulfillment of which was prevented by the Boxer uprising, and not allow such payments to your memorialists. It is inconceivable that the Powers exacted the indemnity with any intention of discriminating between the actual losses suffered by these two classes of merchants, such losses arising from the same identical cause and the one method of business being as legitimate as the other.

Of course, if your honorable body grants the desired rehearing, your memorialists would need to furnish satisfactory proof of these payments of interest and also of the losses caused by the lower prices at which the goods were sold on the reopening of communication, and it would lie with the court to determine whether these items should be allowed under the principles applicable to such an international and remedial transaction as this.

DISALLOWANCE OF THE COMPANY'S CLAIMS INCONSISTENT AND INEQUITABLE.

We are dealing only with the principles on which the commercial indemnities should have been apportioned, or rather with the allowances which should have been made to your memorialists under the circumstances of the case.

The various Governments concerned have compensated themselves for their military, naval, and other expenses as they have seen fit.

According to a memorandum furnished by the Department of State to the Foreign Relations Committee of the Senate, and printed in the Congressional Record of January 15, 1908, No. 22, page 766:

> The indemnity in each case was to be fully and substantially compensatory, excluding all merely speculative or imaginary claims or elements of damage.

If the Department had followed that rule your memorialists would have had no cause of complaint.

A committee chosen from the representatives of the Powers at Peking formulated a set of rules for the assessment of indemnities, subject, however, to a fundamental and controlling principle, viz:

"V. (I) Damages shall be assessed as far as possible and in conformity with the above-mentioned principles with a view to putting governments, societies, companies, and private individuals back in the position in which they would have been if the antiforeign movement of 1900 had not taken place."[a]

The rules so reported at Peking were not adopted by the United States, but the controlling principle recommended by the committee of the Powers and the controlling principle announced to the Senate by the Department of State as having been its rule of action (supra)

[a] Report of the Hon. W. W. Rockhill, Commissioner to China, being Senate Document No. 67, Fifty-seventh Cougress, first session, page 107.

are substantially the same. Although the Department has thus given in its adherence to the principle that full and substantial compensation (excluding speculative and imaginary elements of damage) should be made to citizens of the United States who incurred losses in their trade with China as a direct consequence of the Boxer uprising, nevertheless it has by no means "fully and substantially" compensated your memorialists for their losses, actually and directly suffered in that way. The word "indemnity" applied to the allowances granted in this company's case could hardly be more of a misnomer.

Those merchants who did not send goods into China except on orders, or under contracts previously negotiated, seem to have been indemnified on the principle announced by the Department of State; but your honorable body, not yet having been furnished with the facts in the individual cases, can not fully understand how the different claimants have been treated, and you are therefore less able to decide intelligently how to act in this case, or, indeed, whether to grant the President the authority he has requested in his message. Of course, no part of the indemnity to which an American citizen has an equitable and proper claim should be returned to China.

Messrs. Bainbridge and Ragsdale observe in their report on the claims of the company that "it had no contracts of sale previous to importation, and hence no vested right to any special price;" also that "the effect of the Boxer outbreak on prices is necessarily undeterminable." Subsequently Mr. Bainbridge said "that while the conditions [affecting the value of the claimant's goods in the open market] were doubtless influenced by the Boxer movement, the measure of such influence in particular cases seems undeterminable with any degree of accuracy." But that is no reason for giving your memorialists nothing for the actual losses which they suffered in the disposal of their goods when upon the suppression of the Boxer uprising it became possible to send them from Shanghai into the interior. Besides it is clear that the depreciation in convertible value of such goods by reason of the enforced detention at Shanghai, and the impoverishment, confusion, and uncertainty resulting from the Boxer movement, must have been satisfactorily proved in the contract cases, in which damages were allowed for such losses where the contracts had not been performed by the Chinese merchants on account of death or insolvency caused by the Boxer rebellion. This proof would be available in a reexamination of your memorialists' claim, together with the sworn testimony of their agents and the entries in their books.

If there had been no Boxer uprising, the merchant who exported goods to China on orders previously obtained, would have been no better off with his contracts than this company without them. The presumption is that the goods in both classes of cases were sold at the market prices. It was not because the merchant had a contract for the sale of his goods that he was entitled to indemnity out of the Boxer fund. The enforcement of "contract claims" is not favored by governments. If he had complained of a breach of contract, he would have been told by the Department of State that he must pursue his remedy in the courts. It was because a wrong of far-reaching consequences and international concern had been done—because public order and security had been subverted by violence in a large portion of the Chinese Empire, and because China had acknowledged her responsibility and provided indemnity for the resulting damages, that

the claimant was entitled to be compensated for his actual losses caused by the Boxer outbreak. The discrimination in favor of the one class and against the other by the Commissioners and the State Department will not stand analysis—it is unreasonable, inequitable, and entirely inapplicable and inappropriate to such an international and remedial proceeding. The American merchant who did a jobbing business was just as much entitled to compensation for his actual losses as the American merchant who did an order business. The measure of damages in both cases was the actual loss caused directly by the anti-foreign uprising.

The prior orders or contracts for goods are immaterial to the real issues and fundamental considerations in an international transaction of this sort. Such orders or contracts would merely make it a little easier in some cases to compute the damages.

The "contract" which is at the bottom of this remedial transaction between China and the Powers is the implied contract between the sovereign and the subject, the Government and the inhabitants, under which the individual is entitled to protection of person and property in return for his allegiance, whether it is original and permanent or local and temporary. This is the contract which was broken by the Chinese Government. It failed in its duty of protection (the chief end of government); and, as already said, the question of its liability in damages for this failure has been definitively determined, and an ample indemnity exacted and paid. This should be borne in mind while considering the following authorities on the measure of damages under the common law, the civil law, and the law of nations.

WHAT DAMAGES ARE RECOVERABLE.

Sedgwick (section 182):

> Where it clearly appears that the defendant has interrupted an established business from which the plaintiff has expected to realize profits, the plaintiff should recover compensation for whatever profit he makes it reasonably certain he would have realized.

The same author cites with approval the case of Chapman *v.* Kirby (49 Ill., 212), as follows:

> To measure such damage the jury must have some basis for an estimate, and what more reasonable than to take the profits for a reasonable period next preceding the time when the injury was inflicted, leaving the other party to show that by depression in trade or other causes they would have been less? Nor can we expect that in actions of this character the precise extent of the damages can be shown by demonstration. By this means they can be ascertained with a reasonable degree of certainty.

In Shafer *v.* Wilson (44 Md., 268) the court said:

> It is also established that damages may be recovered for any and all injury sustained, including the breaking of business and the loss of profits actually following, to be determined by the jury from the evidence in relation thereto,

although this is coupled with the declaration that—

> It is settled that mere conjectural or speculative damages depending upon future contingency can not be recovered.

Citing Mayne on Damages, 36, the court thus defines remote damages:

> Damage is only remote when although arising out of the cause of action it does not so immediately and necessarily flow from it as that the offending party can be made responsible for it.

In Donnell *v.* Jones (11 Ala., 689), it is held that—

It is competent to consider loss of mercantile credit, stoppage of business and prevention of sales caused by the wrongful levy of an attachment, and the net profit which the plaintiff would probably have made by the prosecution of his business.

In Masterton *v.* The Mayor of Brooklyn (7 Hill, 62), cited approvingly by the Supreme Court of the United States, it was held that profits or advantages which are the direct and immediate fruits of a contract are part and parcel of the contract itself, and consequently are properly the subject of direct damages. The leading English case is that of Hadley *v.* Baxendale (9 Exchq., 341), which held that if profits accrued in the usual course of things, damages for their loss should be allowed.

The decisions of our own Federal Supreme Court show what are and what are not direct damages. As early as the 13th of Howard, the Supreme Court, quoting with approval Masterton *v.* The Mayor of Brooklyn (supra), said (p. 344):

It is insisted that only actual damages, and not profits, were in that event to be inquired into and allowed by the jury. It must be admitted that actual damages were all that could lawfully be given in an action of covenant, even if the company had been guilty of fraud. But it by no means follows that profits are not to be allowed, understanding as we must, the term "profits" in this instruction as meaning the gain which the plaintiff would have made if he had been permitted to complete his contract. Actual damages clearly include the direct and actual loss which the plaintiff sustains propter rem ipsam non habitam.

And in case of a contract like this, that loss is, among other things, the difference between the cost of doing the work and the price to be paid for it. This difference is the inducement and real consideration which causes the contractor to enter into the contract. For this he expends his time, exerts his skill, uses his capital, and assumes the risks which attend the enterprise. And to deprive him of it * * * would be unjust. There is no rule of law which requires us to inflict this injustice. Wherever profits are spoken of as not a subject of damages, it will be found that something contingent upon future bargains, or speculations, or states of the market, is referred to, and not the difference between the agreed price of something contracted for and its ascertainable value or cost. (See Masterton *v.* The Mayor of Brooklyn, 7 Hill's R., 61, and cases there referred to.) We hold it to be a clear rule that the gain or profit, of which the contractor was deprived, by the refusal of the company to allow him to proceed with and complete the work, was a proper subject of damages. (P. W. & B. R. R. Co. *v.* Howard, 13 How., 307-344.)

In United States *v.* Smith (94 U. S., 218), the Supreme Court reiterated the same doctrine, and held that profits were properly a subject for damages when they would have been a direct result of the contract.

Howard *v.* Manufacturing Co. (139 U. S., 210) held that profits could be recovered as damages for the breach of contract if they were not uncertain and remote—in other words, where they resulted directly from the breach of contract and not by reason of some collateral business which might have been done had the contract remained unbroken.

In the Monongahela Navigation Co. *v.* The United States (148 U. S., 312), the Supreme Court held that when the Government took property by eminent domain, as it had a right to do, it should not only pay for such property, but likewise for the right which the owner of the property had under a franchise to collect future tolls, and that such franchise and the right thereunder to collect tolls in the future were just as truly property as the ownership of the corporeal estate.

In the Anvil Mining Co. *v.* Humble (153 U. S., 540), the Supreme Court went the full length of determining that when profits were direct they were properly subjects for damages. The case was one which involved the right to future profits on a mine, and, on account of its

uncertain nature, it was, of course, not possible to estimate with accuracy what such future profits would be. And yet the court, having said that in every case where profits are not open to the objection of uncertainty or remoteness they were properly subject of damages, went on to decide in that case that, although it was not certain how much ore still remained in the mine or what its quality would be, nevertheless the profits are not open to the objection of uncertainty, and certainly not to that of remoteness, for they would have been the direct result of carrying on the contract to a completion (p. 550).

DAMAGES UNDER INTERNATIONAL LAW.

The rules of international law are drawn largely from the civil law, and, as said by Sir Robert Phillimore:

> From this rich treasury of the principles of universal jurisprudence it will generally be found that the deficiencies of precedent, usage, and express international authority may be supplied. (1 Phill. Int. Law, 32; see also Wheaton's History of the Law of Nations, p. 26; Twiss, Law of Nations, 141; Lawrence's Wheat., 26.)

Mr. Pinckney's statement of the rule, as United States commissioner, in the prize cases before the Mixed Commission which sat in London under the Jay treaty of 1794 (Wheaton's Life of Pinckney, p. 261), is as follows:

> No compensation for an injury can be just and adequate which does not repair that injury, but he who wrongfully deprives me of a lawful profit which I am employed in making, can not be said to afford a reparation until he has given me an equivalent for the advantages of which he has deprived me; to which advantages my right was as unquestionable as the right which I had in the things from which they were to arise. (Moore, Int. Arb., Vol. IV, p. 4205 et seq.)

Rutherforth (I Inst. Natural Law, p. 105, par. 5), lays down the rule that—

> In estimating the damages which any one has sustained, where such things as he has a perfect right to are unjustly taken from him, or withholden, or intercepted, we are to consider, not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the things is likewise the owner of such fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself. (See also Ib., pp. 409, 416.)

Pothier says:

> Damages and interest are the loss which a person has sustained, or the gain which he has missed. Therefore when it is said that the debtor is liable for the damages and interest resulting from the nonperformance of the obligation, it is to be understood that he ought to indemnify the creditor from the loss which the nonperformance of the obligation has occasioned and from the gain of which it has deprived him. (Pothier on Obligations, by Evans, vol. 1, p. 90 et seq.)

For the prevailing rule as to the measure of damages in the prize cases under the Jay treaty of 1794, see Mr. Pinckney's famous opinion in the case of the *Betsey*, IV Moore's Int. Arbs., 4205.

An attempt was made by the British commissioners in the case of the *Neptune*, before the same commission, to limit the damages for her unlawful capture to the invoice price of her cargo, plus 10 per cent for profit, but by a majority vote the commission adhered to the rule adopted in the case of the *Betsey;* i. e., to allow the net value of the cargo at its port of destination at such time as the vessel would probably have arrived there—a rule which gave immense profits in these times of warfare and danger on the seas. In upholding the decision

in the case of the *Betsey* and criticising the minority rule of an addition of a uniform percentage, Mr. Gore, who was associated as United States commissioner with Mr. Pinckney, said:

This rule and any rule settling a value by the same advance on the invoice price of all cargoes may without hesitation be declared to be no rule for the conscience of those who are bound honestly, diligently, impartially, and carefully to examine every complaint according to equity, justice, and the law of nations; and, if the complaint is supported, to award to the complainant full and complete compensation for the loss and damage sustained. It may safely be affirmed that awarding a certain per centum on the invoice price would frequently operate injustice to one of the parties. It might meet a few cases, but it is not in the nature of things that it should be just in all. If it affords more than a compensation for the loss, the Government, which is one of the parties between whom we are impartially to decide, is injured; if less, the other party, viz, the complainant, is injured.

The rule adopted by the board, after much reflection before its adoption, appeared to me conformable to justice, equity, and the law of nations. (IV Moore's Int. Arbs., 4217-4222.)

The rule proposed by the minority was stated by Sir John Nicholl as follows:

A claim is here made of a profit of near 100 per cent. This is scarcely ever heard of in time of peace. If it existed at all, it existed only in consequence of the war and the risks that usually accompany it.

To reimburse the claimants the original cost of their property and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations and accepted by all neutral nations for losses, costs, and damages occasioned by illegal captures.

The rule that was adopted allowed the profit, no matter how enormous it was, because the prices of the goods at the port of destination were ascertainable, and it was assumed as against the wrongdoers that the vessel would have arrived with her cargo at her destination in good condition if she had not been illegally captured.

By the Commission under the convention between the United States and Mexico of April 11, 1839, in the case of Gahagan (Moore, Int. Arbs., vol. 4, p. 3240) the claimant was awarded $6,000 for loss of employment; in other words, for the loss of his business profits or income; and in Doctor Baldwin's case (ib., pp. 3235-3240) the claimant was awarded as damages for placing him in the stocks when his leg was broken and imprisoning him as a criminal for eighty-four days, $20,000; for permanent injury, $10,000; for interruption of business, $10,000; for expenses, $5,000; for costs and translation and physician, $174.75—in all $45,174.75.

As already observed, interest was allowed by the Geneva Tribunal of Arbitration on the estimated damages, and when the lump sum awarded came to be distributed by the first Court of Commissioners of Alabama Claims, the principle of compensating for the expected "catch" or profits was followed, as appears from the following typical fishery decision:

In the case of the *James Maury* we award to the owners alone for the loss and destruction of their property the sum of $10,324.25, which sum will be divided among them according to their respective interests in the vessel and outfits, the court having deducted the amounts severally received by the several parties from insurance in entering the judgments in their favor.

And we award to all the owners jointly as compensation for the damages for the use of the vessel and for the compulsory service of the officers and crew the sum of $16,925, which sum is to be received by the owners, and the same, with interest thereon at 4 per cent per annum from the date of the capture, is to be held by them as and for and in lieu of catch of said vessel, and such sum, with such interest, is to be distributed among the said owners and the officers and crew of said vessel in

their due proportions and in accordance with their several and respective interests in the catch of said vessel. (IV Moore's Int. Abr., 4241.)

In this case the capture prevented the catch, and if the vessel had not been captured she might have been wrecked or had a poor season. But such mere possibilities or cheeseparing objections have no place in the apportionment of international indemnities founded upon the dereliction or wrongdoing of a nation and intended to be equitably administered, or, in the language of the Department of State, to be "in each case fully and substantially compensatory."

In the Martini case, which was decided at Caracas in 1903 by the Italian-Venezuelan commission (one of several such tribunals established after the blockade of the ports of Venezuela by Great Britain, Germany, and Italy), the Italian commissioner said:

To judge this case upon the restricted and narrow ground of direct and material damages suffered by Martini would be illegal and unjust. The ruin of the company is palpably the result of an abnormal state of affairs, justifying the demand for indemnity here presented, because it has been abundantly proved that one of the contracting parties [the Venezuelan Government] was not diligent in the performance of its duties.

As already observed, China has been held by the powers to have broken her implied contract with her inhabitants to afford them due protection in return for their allegiance, whether original and permanent or local and temporary. Many of her highest officials were animated with hatred of foreigners and with sympathy for the Boxers and, instead of suppressing them, made the Empire responsible for their acts either by collusion or sufferance.

In rendering his decision in the Martini case the learned umpire said:

We arrive then at the very important question as to the measure of damages for which the Government is responsible because of these several acts—that is to say, interference with the foreign workmen, with the native workmen, with the port by paper blockade, and with the rights of the contracting party by closure of the port. * * *

It is the opinion of the umpire, several times expressed, that Venezuela is not to be held responsible for speculative profits, but the profits in the present case are not entirely speculative.

The umpire then cites the decision of the Supreme Court of the United States in Howard *v.* Stillwell (139 U. S., 199), to the effect that it is well settled that the profits which would have been realized had the contract been performed, and which have been prevented by its breach, are included in the damages to be recovered in every case where such profits are not open to the objection of uncertainty or remoteness, and proceeds to render an award for 439,673.16 bolivars, with interest at the rate of 3 per cent per annum from October 30, 1903. (Ven. Arbs. of 1903, Ralston's Reports, pp. 819–846.)

Your memorialist's profit would have been included in the market price at which it could and would have sold its goods, which were actually at Shanghai in 1900 but for the Boxer uprising (for which, as we have repeatedly said, it has been finally determined that China was responsible), and the commissioners should therefore have allowed the company the difference between the value of those goods at that market price and the amount for which they were sold in 1901, when communication with the interior was restored on the suppression of the outbreak.

As already observed, the interest charges, which were not allowed, were just as really part of the necessary expenses of carrying the goods as the storage and insurance charges which were allowed.

THE COMPANY HAS EXERCISED DUE DILIGENCE.

It is believed that enough has been said to show that your honorable body should provide for a more formal, systematic, and thorough examination of the company's claim by referring it to the Court of Claims for adjudication, as was done by act of Congress in the "Caldera" claims against China[a] and the Atocha claim against Mexico (supra);[b] and it only remains to add that the company has not been guilty of laches, but has been diligent in the prosecution of its rights as it understands them. On this point we quote from the company's memorial to Congress (S. Doc. No. 202, 60th Cong., 1st sess., pp. 3, 4), as follows:

The company further wishes to state the facts showing that due diligence has been used in the presentation and prosecution of its claim; so that no laches can be imputed to it as a reason for not receiving and carefully and candidly considering its present petition.

The findings of Mr. Bainbridge and Mr. Ragsdale are dated at Tientsin, China, October 15, 1902. The company's request to the Department of State for a review of the recommendation is dated February 17, 1903. On April 13, 1903, the Department declined to change the theory upon which those findings had been reached, but allowed the company to procure evidence from China with which to correct certain alleged misunderstandings as to facts, and this work required considerable time. By April 25, 1905, however, the evidence was procured and the correction was made, but the Department declined to modify the basis of the findings or to consider the principal items of the claim, and thereupon it seemed to the officers of the company that there was nothing further that it could do at that time. Comparatively little of the indemnity money had then been actually received from China. There was no court to which the company could apply, nor could it then appeal to Congress, because the question was not in any way then pending before Congress. But on June 20 last, having seen in the public press a statement that it was expected that the Department would ask permission of Congress to return a considerable part of the fund, the company applied to the Department of State to have its case further considered and was met with a refusal on July 23, 1907. As soon as the President in his message to Congress in December, 1907, referred to the subject the company began to take measures to bring the case before Congress, and prepared to ask the passage of a resolution calling for all pertinent documents in the case, but on the 9th day of January the joint resolution for a remission of the indemnity moneys to China was introduced in the Senate, and while the company's request for the passage of the resolution of inquiry rested in the hands of a member of the committee, the joint resolution was reported on the 14th and passed the Senate on the 15th, before the company had any time to formally present its case.

Under these circumstances, the company respectfully asserts that there has been no delay on its part which should in the slighest degree hinder or prevent the consideration, without prejudice, of its prayer for equity and justice from the Government of the United States toward diligent and deserving American citizens.

Respectfully and earnestly requesting that your honorable body will grant them an adjudication of their claim by the Court of Claims as provided in Senate bill No. 4449 and House bill No. 15353, conformably with the principle enunciated by the Department of State that the indemnity in each case should be "fully and substantially compensatory, excluding all merely speculative or imaginary claims or elements of damage," your memorialist will ever pray.

CHINA AND JAPAN TRADING COMPANY, LIMITED,
By ROBERT CHRISTIE, *Vice-President.*
HOWARD AYRES, *Secretary.*

CRAMMOND KENNEDY, *Of Counsel.*
WASHINGTON, D. C., *February 5, 1908.*

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[a] 20 Stat. L., 171, 172.

[b] 13 Stat. L., 595.

[Senate bill No. 4449, introduced January 27, 1908.]

A BILL For the relief of the China and Japan Trading Company, Limited, of New York City.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the petition of the China and Japan Trading Company, Limited, of New York City, the Court of Claims shall receive evidence showing the damages suffered by said company during the so-called Boxer disturbances in China in the years nineteen hundred and nineteen hundred and one by reason of the detention and depreciation of its merchandise, for which damages the Government of China was adjudged by the joint powers to be liable, and upon which partial amounts were afterwards allowed and payment made to said company by the Department of State, and said court is hereby authorized to render judgment for the amount of the actual losses so suffered by the company, such judgment to be fully and substantially compensatory, excluding all merely speculative or imaginary claims or elements of damage; and the amount of any such judgment shall be paid out of the proceeds of the indemnity moneys received by the United States from China in accordance with the agreement of the joint powers on June fourteenth, nineteen hundred and two.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 227.

CHESAPEAKE AND POTOMAC TELEPHONE COMPANY.

LETTER FROM MR. FRANK H. BETHELL TRANSMITTING THE ANNUAL REPORT OF THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY FOR THE YEAR 1907.

FEBRUARY 6, 1908.—Referred to the Committee on the District of Columbia and ordered to be printed.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY,
Philadelphia, Pa., February 4, 1908.

DEAR SIR: I have the honor to submit herewith, as required by law, a report of the Chesapeake and Potomac Telephone Company to the Congress of the United States for the year 1907.

This report contains the actual figures for the year and is to be substituted for the report submitted on January 9. In the report submitted January 9 the results of the operations of the company for the month of December were estimated.

Very respectfully, yours,

F. H. BETHELL,
Vice-President.

The PRESIDENT OF THE SENATE,
Washington, D. C.

Annual report of the Chesapeake and Potomac Telephone Company to the Congress of the United States for the year 1907.

RECEIPTS AND EXPENDITURES ON ACCOUNT OF OPERATIONS IN THE DISTRICT OF COLUMBIA FOR THE CALENDAR YEAR 1907.

Receipts:	
Telephone earnings	$1,084,605.00
Real estate earnings	64,748.08
Total	1,149,353.08
Expenditures:	
General administrative expenses and taxes	88,415.01
Traffic expenses (central office operating, pay-station commissions, directories, advertising, canvassing, and collecting)	293,250.05
Maintenance (current repairs, renewals, and replacements)	264,418.29
Rentals and sundries (instrument rentals, pole and roof rents, insurance and damage and compensation)	63,699.52
Real estate expenses (care and operation of buildings)	61,377.98
Interest charges	178,624.54
Total	949,785.39
Net earnings, all sources	199,567.69
Depreciation	123,205.13
Revenue balance	76,362.56

Receipts:	
Proceeds of company's notes	$562,741.51
Expenditures:	
For construction of underground conduits and cables	199,929.14
For construction of poles, aerial wires, and fixtures	21,085.95
For central office equipment, station apparatus, furniture, and fixtures	341,726.42
Total	562,741.51
Cost of works (not including real estate) in the District of Columbia, December 31, 1907	3,881,589.40

STATE OF PENNSYLVANIA, *County of Philadelphia, ss:*

Frank H. Bethell, being duly sworn according to law, on his oath says that he is the vice-president of the Chesapeake and Potomac Telephone Company and that the foregoing report is correct and true, to the best of his knowledge and belief.

FRANK H. BETHELL.

Sworn and subscribed to before me this 5th day of February, 1908.

[SEAL.] ROGER S. HENDERSON,
Notary Public.

Commission expires January 20, 1911.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 228.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, POWDER SPRINGS, GA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF POWDER SPRINGS, GEORGIA, AGAINST THE UNITED STATES.

FEBRUARY 6, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 5, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12490. Trustees of the Methodist Episcopal Church South, at Powder Springs, Georgia, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for a church alleged to have been taken by the military forces of the United States during the civil war for the purpose of erecting shanties for winter quarters for said forces. On the 13th day of June, 1906, the Senate of the United States by resolution referred to the court, under the provisions of the act of March 3, 1887, commonly called the "Tucker Act," a bill as follows:

"[S. 3562, Fifty-ninth Congress, first session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, at Powder Springs, Georgia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the sum of one thousand eight hundred dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be paid to the trustees of the Methodist Episcopal Church South, at Powder Springs, Georgia, for the destruction of said church and for the use of the material of said church by the Army of the United States during the civil war.

The claimant appeared and filed its petition in this court on the 28th day of January, 1907, in which it substantially made the following allegations:

That the Methodist Episcopal Church South, at Powder Springs, Ga., as an organization was loyal to the United States throughout the entire civil war; that in the

month of October, 1864, the then trustees of said church were the owners of a frame church building at Powder Springs, Ga., said church being 60 feet long, 40 feet wide, and a finished church in all particulars; that said church was then of the reasonable value of $1,800; that in the month of October, 1864, Union troops under the command of Major Platt tore down said church and used the material thereof in the construction of shanties for the Union Army, and that by reason thereof the congregation of said church was without a house of worship for eight years, and the necessity is now great for a suitable house of worship for said congregation.

This case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

Charles W. Clagett, esq., appeared for the claimant, and the Attorney-General, by Clark McKercher, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, at Powder Springs, Ga., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of said church building described in the petition, and tore down same and used the material thereof in the construction of quarters for the troops; the said building at said time and place was reasonably worth the sum of eight hundred dollars ($800), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 4th day of February, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 229.

ST. PAUL'S EPISCOPAL CHURCH, SELMA, ALA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ST. PAUL'S EPISCOPAL CHURCH, OF SELMA, ALA., AGAINST THE UNITED STATES.

FEBRUARY 6, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 6, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11057. St. Paul's Episcopal Church of Selma, Ala., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for the destruction of the above-named church, alleged to have been destroyed by the military forces of the United States during the war for the suppression of the rebellion. On the 3d day of March, 1903, the United States Senate referred to the court a bill in the following words:

"[S. 5658. Fifty-seventh Congress, first session.]

"A BILL For the relief of the Episcopal Church in Selma, Alabama.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury shall pay to the wardens and vestry of the Episcopal Church of Selma, in the State of Alabama, ten thousand dollars, because of the destruction of the Church building in Selma by the Federal Army in April, eighteen hundred and sixty-five."

The wardens and vestry of St. Paul's Episcopal Church, of Selma, Ala., appeared in this court July 17, 1903, and filed a petition in which it is substantially averred—

That Edward P. Galt, sr., C. C. Grayson, Robert P. Lockhard, R. E. Hardaway, W. C. Agee, R. H. Mabry, J. M. Baker, E. C. Melvin, J. G. Converse, Julien Smith,

and E. T. Peter are the wardens and vestry of St. Paul's Episcopal Church, of Selma, Dallas County, Ala.; that during the late civil war said church was set afire and burned by the United States Army, and the same was entirely consumed.

The church at that time was reasonably worth the sum of $10,000.

The case was brought to a hearing on loyalty and merits on the 13th day of January, 1908.

Fred Beall, esq., appeared for the claimant, and the Attorney-General, by Clark McKercher, esq., appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The St. Paul's Episcopal Church, of Selma, Ala., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During the late civil war and soon after the battle of Selma, Ala., soldiers belonging to the Army of the United States, without authority therefor, entered the town of Selma and set fire to the store P. J. Weaver, a merchant, and the flames from the store spread to the surrounding buildings, among them being the building of the claimant herein, and it was burned, together with the furnishings therein, but for what purpose otherwise than stated does not appear.

The reasonable value of the church building and furnishings so destroyed by fire was at the time and place five thousand six hundred and eighty dollars ($5,680), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.

A true copy.

Test this 4th day of February, A. D. 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 230.

FRANCHISES GRANTED BY THE EXECUTIVE COUNCIL OF PORTO RICO TO C. & J. FANTAUZZI.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

CERTIFIED COPIES OF THREE FRANCHISES GRANTED BY THE EXECUTIVE COUNCIL OF PORTO RICO TO MESSRS. C. & J. FANTAUZZI, THEIR SUCCESSORS AND ASSIGNS.

FEBRUARY 6, 1908.—Read; referred to the Committee on Pacific Islands and Porto Rico and ordered to be printed.

To the Senate and House of Representatives:

In accordance with the provisions of section 32 of an act of Congress entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900, I transmit herewith certified copies of three franchises granted by the executive council of Porto Rico to Messrs. C. & J. Fantauzzi, their successors and assigns.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 6, 1908.*

AN ORDINANCE Granting to Messrs. C. & J. Fantauzzi, their successors and assigns, the right to take and use one hundred and ninety liters of water per second from the "Rio Grande de Maunabo", for irrigation purposes, in the Municipal District of Maunabo.

Be it ordained and enacted by the Executive Council of Porto Rico:

SECTION 1. That the right and privilege are hereby granted to Messrs. C. & J. Fantauzzi, their successors and assigns, to take and use one hundred and ninety liters of water per second from the "Rio Grande de Maunabo", in the Municipal District of Maunabo, for the irrigation of six hundred and sixty five cuerdas of land of the Hacienda "Garonne".

SECTION 2. This franchise is granted subject to the prior rights of third persons, and subject also, to all the terms and provisions of Section 3 of the Joint Resolution of Congress, approved May 1, 1900, entitled: "Joint Resolution to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the act approved April twelfth, nineteen hundred, entitled: 'An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes.'" The right herein granted shall be especially subject to any general plan or system of irrigation that may hereafter be established by law.

SECTION 3. As compensation for the use of the water herein granted, the grantees shall pay yearly in advance to the Treasurer of Porto Rico, for the use of The People of Porto Rico, the sum of thirty cents per cuerda of the land above described; the first annual payment to be made within fifteen days after the approval of this ordinance by the Governor of Porto Rico.

SECTION 4. Should the grantees at any time fail to make said annual payment, or cease to use the water for one year and one day, or should they use said water for any purpose other than as herein authorized, then this concession shall ipso facto become forfeited and of no further force and effect. The Commissioner of the Interior or his agents, shall have the right at any and all times to inspect the work herein authorized.

SECTION 5. The grantees hereby waive all rights to take water under a concession dated November 9, 1889, to take one hundred and ninety liters of water per second from the "Rio Grande de Maunabo" for the irrigation of 284.33 hectares of land belonging to Hacienda "Garonne", said concession being hereby cancelled.

Done in open session of the Executive Council of Porto Rico this the sixteenth day of January A. D. 1908.

(Sgd.) R. DEL VALLE,
President pro tempore of the Executive Council.

Approved this 27 day of January, A. D. 1908.

(Sgd.) REGIS H. POST,
Governor of Porto Rico.

THE PEOPLE OF PORTO RICO.

OFFICE OF THE SECRETARY.

I, W. F. Willoughby, Secretary of Porto Rico, do hereby certify that the foregoing two printed pages are a true copy of an ordinance entitled "An ordinance granting to Messrs. C. & J. Fantauzzi, their successors and assigns, the right to take and use one hundred and ninety liters of water per second from the 'Rio Grande de Maunabo' for irrigation purposes in the Municipal District of Maunabo," as the said ordinance appears upon the official record in my custody of the proceedings of the Executive Council of Porto Rico, at a meeting held on the 16th day of January, A. D. 1908. I further certify that the said ordinance was duly approved by the Governor of Porto Rico on the 27th day of January, A. D. 1908, as appears by the official records in this office.

In witness whereof, I have hereunto set my hand and caused to be affixed the great seal of Porto Rico, at the Capital, on this the 28th day of January, in the year of our Lord nineteen hundred and eight and of the independence of the United States the one hundred and thirty-second.

[SEAL.] W. F. WILLOUGHBY,
Secretary of Porto Rico.

AN ORDINANCE Granting to Messrs. C. & J. Fantauzzi, their successors and assigns, the right to take and use one hundred and seventy-five liters of water per second from the "Rio Grande de Patillas" for industrial purposes in the Central "Lafayette" in the Municipal District of Patillas, and seventy-five liters of water per second from the same river for the irrigation of two hundred and sixty one and one half cuerdas of land of their Hacienda "Cuatro Calles" in the same district.

Be it ordained and enacted by the Executive Council of Porto Rico:

SECTION 1. That the right and privilege are hereby granted to Messres. C. & J. Fantauzzi, their successors and assigns, to take and use one hundred and seventy five liters of water per second from the "Rio Grande de Patillas" in the Municipal District of Patillas, for industrial purposes in the Central "Lafayette," and seventy five liters of water per second from the same river for the irrigation of two hundred and sixty two and one half cuerdas of land of their Hacienda "Cuatro Calles" in the same district.

SECTION 2. This franchise is granted subject to the prior rights of third persons, and subject also, to all the terms and provisions of Section 3 of the Joint Resolution of Congress, approved May 1, 1900, entitled: "Joint Resolution to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the act approved April twelfth, nineteen hundred, entitled: 'An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes.' " The right herein granted shall be especially subject to any general plan or system of irrigation that may hereafter be established by law.

SECTION 3. As compensation for the use of the water herein granted, the grantees shall pay yearly in advance to the Treasurer of Porto Rico, for the use of The People of Porto Rico, the sum of twenty five dollars for the use of the water granted for industrial purposes and thirty cents per cuerda of the land above described; the first annual payment to be made within fifteen days after the approval of this ordinance by the Governor of Porto Rico.

SECTION 4. Should the grantees at any time fail to make said annual payment, or cease to use the water for one year and one day, or should they use said water for any purpose other than as herein authorized, then this concession shall ipso facto become forfeited and of no further force and effect. The Commissioner of the Interior or his agents, shall have the right at any and all times to inspect the work herein authorized.

SECTION 5. The grantees hereby waive all rights to take water by virtue of an authorization given by Mr. P. F. Fernández, Acting

Superintendent of Public Works, under date of May 24, 1904, to take one hundred and twenty six liters of water per second from the "Rio Grande de Patillas" for the irrigation of Hacienda "Cuatro Calles," and for industrial uses is connection with the Central "Lafayette," said authorization being hereby revoked.

Done in open session of the Executive Council of Porto Rico this sixteenth day of January A. D. 1908.

(Sgd.) R. DEL VALLE,
President pro tempore of the Executive Council.

Approved this 27th day of January, A. D. 1908.

(Sgd.) REGIS H. POST,
Governor of Porto Rico.

THE PEOPLE OF PORTO RICO.

OFFICE OF THE SECRETARY.

I, W. F. Willoughby, Secretary of Porto Rico, do hereby certify that the foregoing three printed pages are a true copy of an ordinance entitled "An ordinance granting to Messrs C. & J. Fantauzzi, their successors and assigns, the right to take and use one hundred and seventy five liters of water per second from the 'Rio Grande de Patillas' for industrial purposes in the Central 'Lafayette' in the Municipal District of Patillas, and seventy five liters of water per second from the same river for the irrigation of two hundred and sixty and one half cuerdas of land of their Hacienda 'Cuatro Calles' in the same district,'" as the said ordinance appears upon the official record in my custody of the proceedings of the Executive Council of Porto Rico, at a meeting held on the 16th day of January, A. D. 1908. I further certify that the said ordinance was duly approved by the Governor of Porto Rico on the 27th day of January, A. D. 1908, as appears by the official records in this office.

In witness whereof, I have hereunto set my hand and caused to be affixed the great seal of Porto Rico, at the Capital, on this the 28th day of January, in the year of our Lord nineteen hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

[SEAL.] W. F. WILLOUGHBY,
Secretary of Porto Rico.

AN ORDINANCE Granting to Messrs. C. & J. Fantauzzi, their successors and assigns, the right to take and use one hundred and forty liters of water per second from the "Rio Grande de Patillas," for irrigation purposes, in the Municipal District of Patillas.

Be it ordained and enacted by the Executive Council of Porto Rico:

SECTION 1. That the right and privilege are hereby granted to Messrs. C. & J. Fantauzzi, their successors and assigns, to take and one hundred and forty liters of water per second from the "Rio Grande de Patillas" for the irrigation of four hundred and ninety cuerdas of cane land of the plantation "Catalina."

SECTION 2. This franchise is granted subject to the prior rights of third persons, and subject also, to all the terms and provisions of Section 3 of the Joint Resolution of Congress, approved May 1, 1900, entitled: "Joint Resolution to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the act approved April twelfth, nineteen hundred, entitled: 'An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes.'" The right herein granted shall be especially subject to any general plan or system of irrigation that may hereafter be established by law.

SECTION 3. As compensation for the use of the water herein granted, the grantees shall pay yearly in advance to the Treasurer of Porto Rico, for the use of The People of Porto Rico, the sum of thirty cents per cuerda of the land above described; the first annual payment to be made within fifteen days after the approval of this ordinance by the Governor of Porto Rico.

SECTION 4. Should the grantees at any time fail to make said annual payment, or cease to use the water for one year and one day, or should they use said water for any purpose other than as herein authorized, then this concession shall ipso facto become forfeited and of no further force and effect. The Commissioner of the Interior or his agents, shall have the right at any and all times to inspect the work herein authorized.

SECTION 5. The grantees hereby waive all rights, under a concession dated November 25, 1875, to take ninety one liters of water per second from the "Rio Grande de Patillas" for the irrigation of 130 hectares of land belonging to Hacienda "Catalina," said concession being hereby cancelled.

Done in open session of the Executive Council of Porto Rico, this the sixteenth day of January A. D., 1908.

(Sgd.) R. DEL VALLE,
President pro tempore of the Executive Council.

Approved this 27th day of January, A. D. 1908.

(Sgd.) RÉGIS H. POST,
Governor of Porto Rico.

THE PEOPLE OF PORTO RICO.

OFFICE OF THE SECRETARY.

I, W. F. Willoughby, Secretary of Porto Rico, do hereby certify that the foregoing two printed pages are a true copy of an ordinance entitled: "An ordinance granting to Messrs. C. & J. Fantauzzi, their successors and assigns, the right to take and use one hundred and forty liters of water per second from the Rio Grande de Patillas for irrigation purposes in the Municipal District of Patillas," as the said ordinance appears upon the official record in my custody of the proceedings of the Executive Council of Porto Rico, at a meeting held on the 16th day of January, A. D. 1908. I further certify that the said ordinance was duly approved by the Governor of Porto Rico

on the 27th day of January, A. D. 1908, as appears by the official records in this office.

In witness whereof I have hereunto set my hand and caused to be affixed the great seal of Porto Rico, at the Capital, on this the 28th day of January, in the year of our Lord nineteen hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

[SEAL.]

W. F. WILLOUGHBY,
Secretary of Porto Rico.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 231.

BALTIMORE AND WASHINGTON TRANSIT COMPANY OF MARYLAND.

LETTER FROM THE PRESIDENT OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA TRANSMITTING THE ANNUAL REPORT OF THE BALTIMORE AND WASHINGTON TRANSIT COMPANY OF MARYLAND FOR THE YEAR 1907.

FEBRUARY 6, 1908.—Referred to the Committee on the District of Columbia and ordered to be printed.

EXECUTIVE OFFICE,
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, February 4, 1908.

SIR: The Commissioners of the District of Columbia have the honor to transmit herewith the report for the calendar year ended December 31, 1907, of the Baltimore and Washington Transit Company of Maryland, pursuant to section 10 of "An act to authorize the Baltimore and Washington Transit Company of Maryland to enter the District of Columbia," approved June 8, 1896.

Very respectfully,

HENRY B. F. MACFARLAND,
President Board of Commissioners, District of Columbia.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

To the Congress of the United States:

The Baltimore and Washington Transit Company of Maryland respectfully submits, through the Commissioners of the District of Columbia, the following report, as required by section 10 of its Congressional charter, entitled "An act to authorize the Baltimore and Washington Transit Company of Maryland to enter the District of Columbia," approved June 8, 1896:

First. There are outstanding 2,000 shares of the capital stock held by each as follows:

	Shares.
T. William Harris	15
Washington Junction Stone Co	4
John F. Hume	6
Bowen & Perry	3
Montgomery Construction Co	8
N. Winslow Williams	1

	Shares.
Henry W. Williams	426
Benton G. Boilleau	1
William S. Greene	100
S. D. Waters	1
H. S. Bryant	1
George J. Schedel	1
J. Coleman Drayton	1
William A. Mellen	426
Edwin L. Tunis	1
John H. Fisher	1,005
Total	2,000

Second. As the company under its charter is not allowed to charge any extra fare for service within the District of Columbia, and as it has as yet no contract in operation for division of fares with other District railway companies, it has no receipts to charge itself with.

[SEAL.]

THE BALTIMORE AND WASHINGTON TRANSIT COMPANY OF MARYLAND.
WM. A. MELLEN, *President.*
GEO. J. SCHEDEL, *Secretary.*

STATE OF MARYLAND, *City of Baltimore, ss:*

I hereby certify that on this 31st day of January, in the year 1908, before me, the subscriber, a notary public of the State of Maryland in and for the city of Baltimore aforesaid, personally appeared George J. Schedel, secretary of the Baltimore and Washington Transit Company of Maryland, whose name is signed to the foregoing report, and made oath in due form of law that the statements contained therein are true to the best of his knowledge, information, and belief; and at the same time, before me, also personally appeared William A. Mellen, president of the Baltimore and Washington Transit Company of Maryland, whose name is signed to the foregoing report, and made oath in due form of law that he is the president of the Baltimore and Washington Transit Company of Maryland, and that the statements contained in the foregoing report are true to the best of his knowledge, information, and belief.

Witness my hand and notarial seal.

[SEAL.]

EMIL R. DENHARD, *Notary Public.*

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 233.

LISTS OF LINE AND STAFF OFFICERS OF NAVY ON DUTY IN WASHINGTON, JULY 1, 1905, AND JANUARY 1, 1908, ETC.

LETTER

FROM

THE SECRETARY OF THE NAVY,

TRANSMITTING,

IN RESPONSE TO SENATE RESOLUTION OF JANUARY 21, 1908, LISTS OF ALL LINE AND STAFF OFFICERS OF THE NAVY ON DUTY IN WASHINGTON JULY 1, 1905, AND JANUARY 1, 1908, ETC.

FEBRUARY 10, 1908.—Referred to the Committee on Naval Affairs and ordered to be printed.

NAVY DEPARTMENT,
Washington, February 6, 1908.

SIR: In response to the request for information contained in the resolutions adopted by the Senate January 21, 1908, I have the honor to transmit, in accordance with the direction of the President, detailed statements as follows:

First, the statement marked "Exhibit A," giving a complete list of all line and staff officers of the Navy on duty in Washington, D. C., on the 1st day of July, 1905, giving the name, rank, and specific duty of each officer on said duty; also the particular duty upon which any such officer was engaged as a member of any board in the Navy Department, and the necessity therefor.

Second, the statement marked "Exhibit B," giving a complete list of all line and staff officers of the Navy on duty in Washington, D. C., and in any navy-yard or naval station in the United States on the 1st day of January, 1908, with the name, rank, and specific duty performed by such officer, and, when attached to any board in the Navy Department, the nature of his duty and the necessity for the same.

Third, in order to comply with the Senate resolutions mentioned, the following explanation of the nature of the duties of and the necessity for certain boards mentioned in Exhibits A and B is submitted:

GENERAL BOARD.

Devising measures and plans for effective preparation and maintenance of fleet for war and advising the Secretary of the Navy as to disposition and distribution of fleet and of reenforcement of ships, officers, and men of the Navy and Marine Corps. Preparing and submitting to the Secretary plans of campaign, including cooperation with the Army, and employment of all elements of naval defense (Naval Militia, Coast Survey, Light-House Service, and merchant vessels, etc.), and constantly revising these plans in accordance with latest information received. Considering the number and types of ships proper to constitute the fleet, the number and rank of officers, and the number and ratings of enlisted men required to man them, and advising the Secretary respecting the estimates therefor to be submitted annually to Congress. Advising the Secretary concerning the location, capacity, and protection of coal depots and supplies of coal; the location, general arrangement, and protection of naval stations, reserves of ordnance and ammunition, and depots of supplies, and advising as to the delivery of provisions and stores of every kind required by the fleet. Coordinating the work of the Naval War College, the Office of Naval Intelligence, and the board of inspection and survey, and considering and reporting upon naval operations, maneuvers, tactics, organization, training, and such other subjects as the Secretary may lay before it.

The foregoing duties are not assigned by law or regulation to any bureau, officer, or other board under the Navy Department. The practice of assigning advisory and other duties of the nature indicated to a body of officers prevails in every important military service in the world.

BOARD OF INSPECTION AND SURVEY.

The duties of the board are defined in the following extract from the Navy Regulations, 1905 (art. 1773):

> This board, under specific orders in each case from the Department, shall be charged with the acceptance examinations and trials of all naval vessels built by private firms, and the inspection of all naval vessels on their return from foreign stations, and vessels in the United States as often as once in three years when practicable, and, when ordered, shall inspect any vessels in reserve or in ordinary, and shall report to the Secretary of the Navy in writing which of said vessels are unfit for further service, or if the same are unfinished in any navy-yard, those which can not be finished without great and disproportionate expense, and shall in such report state fully the grounds and reasons for this opinion.

The necessity for this board is to promote military efficiency, to advance the public interests as to economy of expenditure for naval purposes, and to safeguard those interests by assuring the proper discharge of obligations on the part of persons under contracts pertaining to the construction of vessels.

So much of the foregoing duty as relates to reports regarding repairs and completion of vessels is required by the act of August 5, 1882 (22 Stat., 296).

JOINT BOARD.

The duties of the Joint Board (composed of 4 officers of the Army and 4 of the Navy, created in pursuance of an agreement between the War and Navy Departments, July 17, 1903) is—

> to hold stated sessions and such extraordinary sessions as shall appear advisable for the purpose of conferring upon, discussing, and reaching common conclusions regarding all matters calling for * * * cooperation

between the land and naval forces and to harmonize plans with a view to advancing the military interests of the United States.

BOARD ON CONSTRUCTION.

This board has general supervision over the designing, constructing, and equipping of new ships of the Navy, and is composed of the chiefs of the Bureaus of Equipment, Ordnance, Construction and Repair, and Steam Engineering, and such other officers as the Secretary may designate. Its necessity is the coordination of the individual interest of the bureaus mentioned.

NAVAL EXAMINING BOARD.

Organized to carry out the provisions of section 1496 of the Revised Statutes.

MEDICAL EXAMINING BOARD.

Organized to carry out the provisions of section 1493 of the Revised Statutes.

JOINT ARMY AND NAVY BOARD ON GUN FORGINGS.

To consider the subject of gun forgings, the specifications covering their manufacture, and the details of their inspection, in order that uniform methods may prevail in both services; in addition to that, the investigation of defects in forgings with the endeavor to perfect the quality of material furnished the Government.

JOINT ARMY AND NAVY BOARD ON SMOKELESS POWDER.

Investigation and revision of specifications for the manufacture of smokeless powder so that uniform methods shall obtain in both services, consideration and recommendations concerning new developments in powder, investigating and reporting on ammunition supplies, reserve supplies, capacities of plants, etc., and also recommendations concerning price of smokeless powder.

Inclosed also, marked "Exhibit C," is a synopsis of Exhibits A and B.

Very respectfully, V. H. METCALF,
Secretary.

The PRESIDENT OF THE SENATE.

EXHIBIT A.—*List of line and staff officers on duty at Washington, D. C., July 1, 1905*—Continued.

NAVY DEPARTMENT—Continued.

BUREAU OF STEAM ENGINEERING.

Name.	Rank.	Paramount duty.	Additional duty, etc.
C. W. Rae[a]	Rear-admiral	Chief of Bureau	Member of board on construction.
A. F. Dixon[a]	Captain	Assistant to chief of Bureau	Member of board on construction in absence of engineer in chief.
A. B. Canaga[a]	Commander	In charge of designing and drafting division	Occasionally a member of board for the trial of new vessels.
W. M. Parks[a]	do	Supervision of the inspection in the nine inspection districts of the Bureau, of all material entering into the construction of naval machinery.	Preparation of specifications for material. Occasionally a member of board for the trial of new vessels.
W. W. White[a]	Commander (retired)	Assistant to officer in charge of designing and drafting division	Explosion engines for submarines and launches. Occasionally a member of board for the trial of new vessels.
R. S. Griffin[a]	Lieutenant-commander	Details of design of machinery for vessels under construction	Occasionally a member of board for the trial of new vessels.
B. C. Bryan[a]	do	do	Do.
T. C. Fenton	do	General supervision of inspection of machinery building by contract	Do.
I. N. Freeman	Lieutenant	General supervision of work at navy-yards on machinery of ships in commission.	
C. K. Mallory	do	Preparation of allowances of stores for ships and supervision of requisitions for supplies; inspection of steam logs and preparation of coal endurance data.	General duties of bureau, not classified.
M. T. Winston	do	Under instruction in details of design of machinery under construction	Boards for contract trials of new vessels.

BUREAU OF NAVIGATION.

G. A. Converse	Rear-admiral	Chief of Bureau	Board on construction and ex-officio member General Board.
W. P. Potter	Captain	Assistant to Chief of Bureau	Officers records. Duty in connection General Board.
C. McR. Winslow	Commander	Movements of ships; diplomatic correspondence and discipline	Do.
N. R. Usher	do	Detail officer	
W. S. Sims	Lieutenant-Commander	Inspector of target practice	
H. B. Wilson	do	Division of enlisted men	
F. L. Chapin	do	Readiness of ships for service	
T. Washington	do	Cipher and confidential correspondence	
W. K. Harrison	do	Records of target practice	
R. McLean	Lieutenant	do	

BUREAU OF EQUIPMENT.

H. N. Manney	Rear-admiral	Chief of Bureau	Board on construction.
C. A. Gove	Commander	Assistant to Chief	
V S. Nelson	Lieutenant-commander	Duty in connection with coal depot construction	
S. S. Robison	Lieutenant	Duty in connection with wireless telegraph service	
C. F. Hughes	do	Duty in connection with allowances of ships	
L. A. Kaiser	do	Assistant to Lieutenant Robison	
G. H. Peters	Commander	Superintendent of compasses	Wireless telegraph board.
J. M. Ellicott	Lieutenant-commander	Assistant to superintendent of compasses	
G. W. Denfeld	Commander (retired)	Inspector of electrical appliances	
B. A. Fiske	Commander	Wireless telegraph board	

NAVAL OBSERVATORY.

C. M. Chester	Rear admiral	Commander of squadron composing expedition to observe total solar eclipse of Aug. 30, 1905.	Superintendent Naval Observatory.
J. A. Norris	Captain	Duty in connection with above expedition	
T. D. Griffin	Commander	Acting superintendent, head of department of nautical instruments and general storekeeper.	
E. E. Hayden	Lieutenant-commander	Duty in connection with expedition to observe total solar eclipse of Aug. 30, 1905, on board U. S. S. Minneapolis.	Head of department of chronometers and time service.
A. N. Skinner	Professor of mathematics, rank of commander.	In charge division of equatorial instruments	
W. S. Eichelberger	Professor of mathematics, rank of lieutenant.	Duty in connection with expedition to observe total solar eclipse of Aug. 30, 1905; on board U. S. S. Minneapolis.	In charge of division of meridian instruments.
W. S. Harsham	do	Director Nautical Almanac	
F. B. Littell	do	Duty in connection with expedition to observe solar eclipse of Aug. 30, 1905; on board U. S. S. Minneapolis.	In charge division of altazimuth

HYDROGRAPHIC OFFICE.

H. M. Hodges	Captain (retired)	Hydrographer	
H. H. Barroll	Commander (retired)	In charge of division of chart supply; directs the issue of Hydrographic Office, Coast Survey, and British Admiralty charts to ships of the Navy; prepares chart catalogues for publication and directs their issue, and prepares all correspondence relating to charts and catalogues.	
Harry Kimmell	do	In charge of division of Sailing Directions; has charge of preparation and revision of all Sailing Directions and Light Lists, and their Supplements, International Signal Code, and Notices to Mariners; has charge of archives, library of reference, the outfits of navigational books for navigators, and all correspondence relating to the issue of the foregoing publications.	
Glennie Tarbox	Lieutenant	Assistant, Division of Sailing Directions; preparation and revision of Sailing Directions for publication.	

EXHIBIT A.—*List of line and staff officers on duty at Washington, D. C., July 1, 1905*—Continued.

NAVY DEPARTMENT—Continued.

BUREAU OF STEAM ENGINEERING.

Name.	Rank.	Paramount duty.	Additional duty, etc.
C. W. Rae a	Rear-admiral	Chief of Bureau	Member of board on construction.
A. F. Dixon a	Captain	Assistant to chief of Bureau	Member of board on construction in absence of engineer in chief.
A. B. Canaga a	Commander	In charge of designing and drafting division	Occasionally a member of board for the trial of new vessels.
W. M. Parks a	do	Supervision of the inspection in the nine inspection districts of the Bureau, of all material entering into the construction of naval machinery.	Preparation of specifications for material. Occasionally a member of board for the trial of new vessels.
W. W. White a	Commander (retired)	Assistant to officer in charge of designing and drafting division	Explosion engines for submarines and launches. Occasionally a member of board for the trial of new vessels.
R. S. Griffin a	Lieutenant-commander	Details of design of machinery for vessels under construction	Occasionally a member of board for the trial of new vessels.
B. C. Bryan a	do	do	Do.
T. C. Fenton	do	General supervision of inspection of machinery building by contract	Do.
I. N. Freeman	Lieutenant	General supervision of work at navy-yards on machinery of ships in commission.	
C. K. Mallory	do	Preparation of allowances of stores for ships and supervision of requisitions for supplies; inspection of steam logs and preparation of coal endurance data.	General duties of bureau, not classified.
M. T. Winston	do	Under instruction in details of design of machinery under construction	Boards for contract trials of new vessels.

BUREAU OF NAVIGATION.

G. A. Converse	Rear-admiral	Chief of Bureau	Board on construction and ex-officio member General Board.
W. P. Potter	Captain	Assistant to Chief of Bureau	Officers records. Duty in connection General Board.
C. McR. Winslow	Commander	Movements of ships; diplomatic correspondence and discipline	Do.
N. R. Usher	do	Detail officer	
W. S. Sims	Lieutenant-Commander	Inspector of target practice	
H. B. Wilson	do	Division of enlisted men	
F. L. Chapin	do	Readiness of ships for service	
T. Washington	do	Cipher and confidential correspondence	
W. K. Harrison	do	Records of target practice	
R. McLean	Lieutenant	do	

C. T. Vogelgesang	do	Division of enlisted men	
R. Z. Johnston	do	Cipher and confidential correspondence	

OFFICE OF NAVAL INTELLIGENCE.

R. T. Mulligan	Lieutenant-commander	Assistant chief intelligence officer; staff intelligence officer employed in collating and classifying information from abroad.	
C. P. Plunkett	do	Staff intelligence officer; duty as above	
H. P. McIntosh (retired)	Lieutenant	do	
E. T. Constien	do	do	
A. W. Pressy	do	do	

NAVAL EXAMINING BOARD.

T. Perry	Captain	President	Also naval retiring board.
W. W. Kimball	do	Member	Do.
R. G. Davenport	do	do	Do.
W. B. Bayley	Commander	do	Do.

NAVAL RETIRING BOARD.

A. F. Price	Medical director, rank of captain.	Member	
J. C. Wise	do	do	Also medical examining board.

MEDICAL EXAMINING BOARD.

F. M. Gunnell (retired)	Medical director, rank of captain.	President	
A. A. Hoehling (retired)	do	Member	

a In accordance with law, officers opposite whose names this mark appears perform engineering duty on shore only.

EXHIBIT A.—*List of line and staff officers on duty at Washington, D. C., July 1, 1905*—Continued.

NAVY DEPARTMENT—Continued.

BOARD FOR EXAMINATION OF MEDICAL OFFICERS, WASHINGTON, D. C.

Name.	Rank.	Paramount duty.	Additional duty, etc.
R. A. Marmion	Medical director, rank of captain.	President	
J. C. Boyd	do	Member	Also medical examining board.
P. A. Lovering	Medical inspector, rank of commander.	do	Bureau of Medicine and Surgery.
C. F Stokes	Surgeon, rank of lieutenant-commander.	do	Do.
J. C. Pryor	do	do	Do.

BUREAU OF ORDNANCE.

N. E. Mason	Rear-admiral	Chief of Bureau	Board on construction.
J. Hubbard	Captain	Assistant to chief of Bureau	
W. McLean	Commander	Duty in Bureau	
J. H. Glennon	do	do	
L. H. Chandler	Lieutenant-commander	do	
N. C. Twining	do	do	
J. L. Latimer	do	do	
J. Halligan, jr	Lieutenant	do	
J. W. Timmons	do	do	
A. M. Knight	Commander	Special board on naval ordnance	Required for the study and determination ordnance problems for the guidance of the Bureau.
A. C. Dieffenbach	Lieutenant-commander	do	In charge proving ground.
P. R. Alger	Professor of mathematics, rank of commander.		Naval Academy.
C. C. Block	Lieutenant	Under instruction in ordnance	
J. R. Combs	do	do	
C. R. Kear	do	do	
B. A. Long	do	do	
H. E. Cook	Ensign	do	
W. L. Pryor	do	do	

BUREAU OF SUPPLIES AND ACCOUNTS.

H. T. B. Harris (retired)	Paymaster-General (retired), rank of rear-admiral.	Chief of Bureau
S. McGowan	Paymaster, rank of lieutenant.	Assistant to Bureau
W. T. Wallace	Paymaster, rank of lieutenant.	Correspondence relative to provisions and clothing, including requisitions from afloat and abroad; also money requisitions, surveys, etc.
C. J. Peoples	do	In charge of contracts; also naval supply fund.
J. M. Hancock	Assistant Paymaster, rank of ensign.	Assistant to the officer in charge of contracts, etc., naval supply fund; correspondence relative thereto; deserters' roll; also travel claims.
G. M. Adee	do	Deserters' roll; also travel claims.
J. N. Jordan	do	Temporary duty while awaiting detail to sea duty; assisting in handling correspondence with reference to applications for admission to the Pay Corps.
C. W. Littlefield	Pay Director, rank of captain.	General inspector of the Pay Corps

BUREAU OF SUPPLIES AND ACCOUNTS.

[Other than officers on duty in the Bureau of Supplies and Accounts.]

Stephen Rand	Pay director, rank of captain.	General storekeeper, navy-yard; receiving and issuing stores and supplies to yard departments and ships at the yard, etc.
L. C. Kerr	Pay inspector, rank of commander.	Navy Pay Office; purchase of supplies and services; payment of bills, advances, mileage, and allotments.
L. Hunt	do	Navy Pay Office, temporary; being relieved of this duty and turning over to his successor preparatory to assignment to sea duty.
H. E. Biscoe	Paymaster, rank of lieutenant.	President naval examining board, temporary. Examination of candidates for admission to the Pay Corps (temporary duty).
J. H. Merriam	do	Pay officer of the yard, navy-yard; pays officers, enlisted men, and civilian employees at the navy-yard, including yard craft and seamen gunners' class; also officers, etc., at the naval proving grounds, Indian Head; also officers on duty in the Department, etc.

EXHIBIT A.—*List of line and staff officers on duty at Washington, D. C., July 1, 1905*—Continued.

NAVY DEPARTMENT—Continued.

BUREAU OF CONSTRUCTION AND REPAIR.

W. L. Capps	Chief constructor, rank of rear-admiral.	In general charge of all work under cognizance of the Bureau of Construction and Repair; member of board on construction.
J. H. Linnard	Naval constructor, rank of captain.	Senior assistant to chief constructor, and during absence of latter, in immediate charge of all technical work, including representation of Bureau on board on construction. This officer also had immediate charge of all questions concerning assignment of civil employees under the Bureau of Construction and Repair; usually served as president of all examining boards for civil technical employees at examinations held in Washington, and, in any event, examined all reports of similar boards when examinations were held elsewhere; also usually served as president of examining boards for the promotion of officers in corps of naval constructors; had immediate supervision over all changes and reports thereon for vessels under construction, and examined reports of boards on changes; was also charged with preparation of data and reports concerning controversial matters and claims of all kinds made by contractors in connection with vessels under construction; supervision of reports and estimates in connection with new vessels, and bills for payments on ships building by contract; also general supervision of accounts of vessels under construction; general miscellaneous duties as senior technical assistant to chief constructor as assigned from time to time. In addition to his duties at the Bureau, this officer, by reason of the great scarcity of officers in the corps of naval constructors, was assigned as superintending constructor at two ship yards on the Delaware River, being assisted at each of these yards by a junior officer of the corps. These duties consumed from one to two days each week.
D. W. Taylor	Naval constructor, rank of captain.	This officer was second senior assistant to the chief constructor and had immediate charge of all work at the experimental model basin at the navy-yard, Washington; also other miscellaneous experimental work directed to be performed at that yard from time to time by the chief constructor. His duties also included the consideration of miscellaneous technical matters referred to him and investigations of special questions as directed by the chief constructor, most of such work being in connection with new designs of naval vessels; all communications from private persons suggesting improvements or ideas in connection with naval vessels were also usually referred to this officer. He was also a member of the boards to determine the cost of changes authorized on 12 naval vessels building under contract at the shipyards of the Wm. Cramp & Sons Ship and Engine Building Co., Neafie & Levy Ship and Engine Building Co., the New York Shipbuilding Co., and the Newport News Shipbuilding and Dry Dock Co. These duties necessitated his frequently absenting himself from his duties in Washington. He was also at that time detailed as a member of two assistant committees for the Keep Commission. In addition to the above duties he was detailed from time to time, as the necessities of the service

		demanded, to represent the Bureau on various boards and for duty as member of examining boards.	
F. B. Zahm	Naval constructor, with rank of lieutenant.	This officer was the assistant to the chief constructor in all matters relating to repairs to vessels of the fleet and vessels undergoing extensive overhauling at navy-yards, and had immediate charge of all reports and estimates in connection therewith, passed upon all requisitions for material, etc., and in the performance of those duties consulted with representatives of other bureaus in regard thereto. He also prepared memoranda for the action of the chief of bureau with respect to boards of survey on vessels; also miscellaneous reports involving repairs to vessels, their equipage and fittings; also passed upon allowance lists and requisitions for vessels in active service and performed such special work and service as a member of various boards as were directed from time to time. This officer also had general supervision of inspection of hull material.	
R. H. Robinson	Assistant naval constructor, with rank of lieutenant.	Assistant to the chief constructor and, under his direction, in immediate charge of design work and plans, specifications, and calculations pertaining thereto; in this connection had general supervision of the drafting force and the distribution of the technical work performed in the drawing office. He was also charged with the preparation of allowance lists for new vessels. the preparation of circulars defining the chief characteristics of vessels, general supervision of work relating to electrical auxiliaries under cognizance of the bureau, criticism of plans, estimates, and requisitions for work relating to the improvement of construction plants at navy-yards, and the preparation of standard plans, specifications, and instructions for same under the Bureau of Construction and Repair, correction and preparation of technical data, as directed by the chief constructor, for use in the Bureau's annual report or otherwise. In addition to his duties in Washington, he was also a member of various boards on changes at the navy-yard, New York, the New York Shipbuilding Co., Camden, N.J. and the Newport News Shipbuilding and Dry Dock Co., Newport News, Va., these duties requiring frequent absences from Washington. He was also charged with the preparation of special reports and the performance of special duties, as were directed from time to time by the chief constructor.	

BUREAU OF MEDICINE AND SURGERY.

P. M. Rixey	Medical inspector, rank of rear-admiral.	Surgeon-General	
A. F. Price	Medical director, rank of captain.	Member retiring board	
R. A. Marmion	do	In command Naval Medical School	President medical examining board.
G. C. Bradley	do	In command Washington Hospital	
Paul Fitzimons	do	Navy-yard, Washington	
W. S. Dixon	do	Naval Dispensary	Attending officers on duty in Washington.
W. A. McClurg	Medical inspector, rank of commander.	Bureau of Medicine and Surgery	In charge division of records and pensions.
Frank Anderson	do	Marine Barracks	Examination of candidates and junior medical officers for promotion.

EXHIBIT A.—*List of line and staff officers on duty at Washington, D. C., July 1, 1905*—Continued.

NAVY DEPARTMENT—Continued.

BUREAU OF MEDICINE AND SURGERY—Continued.

Name.	Rank.	Paramount duty.	Additional duty etc.
W. R. DuBose	Medical inspector, rank of commander.	Assistant to chief of Bureau of Medicine and Surgery	
H. G. Beyer	Medical inspector, rank of commander.	Naval Medical School	Instructor.
J. F. Leys	Surgeon, rank of lieutenant commander.	Bureau of Medicine and Surgery	Preparation of report on diseases at Guam.
W. M. Garton	do	Naval Hospital, Washington	Executive officer.
J. A. Murphy	Passed assistant surgeon, rank of lieutenant.	Naval Medical School	Under instruction.
A. W. Balch	do	do	Instruction.
P. E. McDonnold	do	Naval Dispensary	Assistant.
U. R. Webb	do	Bureau of Medicine and Surgery	Preparing statistics of diseases.
R. G. Heiner	Assistant surgeon, rank of lieutenant (junior grade).	Navy-yard, Washington, D. C.	Assistant.
Bruce Elmore	do	Naval Hospital, Washington	Do.

NAVY-YARD, WASHINGTON.

E. C. Pendleton	Captain	Commandant and superintendent, Naval Gun Factory	In charge seamen's quarters.
R. G. Davenport	do	Inspection board	Head of departments of equipment and navigation; recorder of labor board; president general court-martial.
J. M. Bowyer	Commander	Executive officer, Naval Gun Factory	Head of departments yards and docks and steam engineering; senior member labor board.
H. W. Jones	Lieutenant-Commander	Ordnance	
A. A. Ackerman[a]	do	do	In charge drafting room.
G. V. Hayward[a]	Lieutenant	do	Surveying officer.
W. K. Gise[a]	do	do	
R. W. McNeely	do	do	Member of inspection and labor boards.
S. P. Fullinwider	do	do	
R. C. Bulmer	do	do	
W. S. Turpin	do	do	Member of labor board.
H. C. Mustin	do	do	
F. T. Evans	do	Commanding U. S. S. Sylph	Executive officer of seamen's quarters.

G. P. Bradley	Medical director, rank of captain.	In charge naval hospital	
P. Fitzsimons	do	Medical officer of yard	
B. Elmore	Assistant surgeon, rank lieutenant (junior grade).	Attached to naval hospital	
R. G. Heiner	do	Assisting medical officer of yard	
S. Rand	Pay director, rank of captain.	General storekeeper	
L. A. Frailey	do	Purchasing pay officer	
J. H. Merriam	Paymaster, rank of lieutenant.	Paymaster of yard	
R. R. Hoes	Chaplain, rank of captain	Chaplain of station	

NAVAL PROVING GROUND.

INDIAN HEAD, MD.

A. C. Dieffenbach	Lieutenant-commander	Inspector of ordnance in charge of naval proving ground and powder factory.	Member of special board on naval ordnance and joint army and navy board on powder.
A. W. Hinds	Lieutenant	Senior assistant mathematical work on ordnance records and special chronograph work; superintendent of magazines.	Member of board of inspection.
R. Spear	do	Assistant proof officer	
C. A. Abele	do	Mathematical work on ordnance	Member of labor board.
H. T. Nelson	Assistant surgeon, rank of lieutenant (junior grade).	Medical officer	

OFFICERS EMPLOYED ON SPECIAL DUTY.

GENERAL BOARD.

G. Dewey	Admiral	Senior member	Also Army and Navy Joint Board.
C. E. Clark	Rear-admiral	Member	
C. S. Sperry	Captain	President Naval War College	Member General Board.
S. Schroeder	do	Chief intelligence officer	Do.
W. T. Swinburne	do	Member	
W. Swift	do	do	Also Army and Navy Joint Board.
R. Wainwright	do	do	Do.
S. E. W. Kittelle	Lieutenant	Secretary	

[a] Inspectors of guns, mounts, and ordnance material during process of manufacture.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY DEPARTMENT—Continued.

OFFICE OF THE JUDGE-ADVOCATE-GENERAL.

Name.	Rank.	Paramount duty.	Additional duty, etc.
E. H. Campbell	Captain	Judge-Advocate-General	
H. Phelps	Commander	Preparation of charges and revision of proceedings of general court-martial cases, etc.	
W. O. Hulme (retired)	do	Same as above, courts of inquiry, boards of inquest, etc.	
B. W. Wells (retired)	do	Examining boards, retiring boards, question of military law, regulations, etc.	

BUREAU OF YARDS AND DOCKS.

R. C. Hollyday	Civil engineer with rank of rear-admiral.	Chief of Bureau.	
U. S. G. White	Civil engineer with rank of captain.	Permanently assigned as senior member board for examining candidates for positions under cognizance of the Bureau; keeps record all examinations except such as are filed in the office of Judge-Advocate-General; in charge of records relative technical and clerical force under the Bureau and its yard departments, and attends to the filling of places under these heads; examines all efficiency cards of employees.	
F. T. Chambers	Civil engineer with rank of lieutenant-commander.	Plans and specifications received from navy-yards or contractors and which do not require detailed calculations necessitating reference to the drafting room are passed upon by this officer for recommendation to Chief of Bureau; reviews all monthly and special reports from navy-yards and stations, and such other technical correspondence as may be referred to him.	Special duty, Departments of Agriculture and Justice.
H. R. Stanford	Civil engineer with rank of lieutenant.	Charged with the preparation of standard specifications; duties relating to centralization of power at various stations.	Such other duty as may be assigned from time to time.
F. R. Harris	do	Examination of proposals and recommendations for awards received from the Bureau of Supplies and Accounts; proposals received on Bureau contracts are referred to him for examination and recommendation to the Chief of Bureau; charge of everything pertaining to requisitions for material; in charge of correspondence regarding inspection work on contracts.	Do.
A. L. Parsons	Civil engineer with rank of lieutenant.	In charge of all assistants and draftsmen in the main drafting room and in the blueprint and file rooms in the Mills Building. Responsible for preparation of all plans and specifications which are directly assigned to him. All correspondence affecting specially selected contracts filed with him for attention.	Do.

BUREAU OF FISHERIES.

C. R. Roelker	Rear-admiral (retired)		
Robert Platt	Commander (retired)		

STATE, WAR, AND NAVY DEPARTMENT BUILDING.

Geo. W. Baird	Rear-admiral (retired)	Superintendent	

DUTY WITH CIVIL SERVICE COMMISSION.

W. B. Bayley	Commander		

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908.*

NAVY DEPARTMENT

OFFICE OF THE SECRETARY.

Name.	Rank.	Paramount duty.	Additional duty, etc.
T. Williamson (retired)	Chief engineer	Naval pensions	
H. N. Manney (retired)	Rear-admiral	Special duty	
S. W. B. Diehl	Captain	do	
M. T. Endicott (retired)	Civil engineer, rank of rear admiral.	do	

OFFICE OF THE ASSISTANT SECRETARY.

A. E. Culver	Commander	Office of the Assistant Secretary	Naval militia.

EXHIBIT A.—*List of line and staff officers on duty at Washington, D. C., July 1, 1905*—Continued.

NAVY DEPARTMENT—Continued.

BUREAU OF MEDICINE AND SURGERY—Continued.

Name.	Rank.	Paramount duty.	Additional duty etc.
W. R. DuBose	Medical inspector, rank of commander.	Assistant to chief of Bureau of Medicine and Surgery	
H. G. Beyer	Medical inspector, rank of commander.	Naval Medical School	Instructor.
J. F. Leys	Surgeon, rank of lieutenant commander.	Bureau of Medicine and Surgery	Preparation of report on diseases at Guam.
W. M. Garton	do	Naval Hospital, Washington	Executive officer.
J. A. Murphy	Passed assistant surgeon, rank of lieutenant.	Naval Medical School	Under instruction.
A. W. Balch	do	do	Instruction.
P. E. McDonnold	do	Naval Dispensary	Assistant.
U. R. Webb	do	Bureau of Medicine and Surgery	Preparing statistics of diseases.
R. G. Heiner	Assistant surgeon, rank of lieutenant (junior grade).	Navy-yard, Washington, D. C	Assistant.
Bruce Elmore	do	Naval Hospital, Washington	Do.

NAVY-YARD, WASHINGTON.

E. C. Pendleton	Captain	Commandant and superintendent, Naval Gun Factory	In charge seamen's quarters.
R. G. Davenport	do	Inspection board	Head of departments of equipment and navigation; recorder of labor board; president general court-martial.
J. M. Bowyer	Commander	Executive officer, Naval Gun Factory	Head of departments yards and docks and steam engineering; senior member labor board.
H. W. Jones	Lieutenant-Commander	Ordnance	
A. A. Ackerman[a]	do	do	In charge drafting room.
G. V. Hayward[a]	Lieutenant	do	Surveying officer.
W. K. Gise[a]	do	do	
R. W. McNeely	do	do	Member of inspection and labor boards.
S. P. Fullinwider	do	do	
R. C. Bulmer	do	do	
W. S. Turpin	do	do	Member of labor board.
H. C. Mustin	do	do	
F. T. Evans	do	Commanding U. S. S. Sylph	Executive officer of seamen's quarters.

G. P. Bradley	Medical director, rank of captain.	In charge naval hospital	
P. Fitzsimons	do	Medical officer of yard	
B. Elmore	Assistant surgeon, rank lieutenant (junior grade).	Attached to naval hospital	
R. G. Heiner	do	Assisting medical officer of yard	
S. Rand	Pay director, rank of captain.	General storekeeper	
L. A. Frailey	do	Purchasing pay officer	
J. H. Merriam	Paymaster, rank of lieutenant.	Paymaster of yard	
R. R. Hoes	Chaplain, rank of captain	Chaplain of station	

NAVAL PROVING GROUND.

INDIAN HEAD, MD.

A. C. Dieffenbach	Lieutenant-commander	Inspector of ordnance in charge of naval proving ground and powder factory.	Member of sp nance and board on po cial board on naval ord-
A. W. Hinds	Lieutenant	Senior assistant mathematical work on ordnance records and special chronograph work; superintendent of magazines.	Member of boar joint army and navy der.
R. Spear	do	Assistant proof officer	d of inspection.
C. A. Abele	do	Mathematical work on ordnance	Member of labo
H. T. Nelson	Assistant surgeon, rank of lieutenant (junior grade).	Medical officer	r board.

OFFICERS EMPLOYED ON SPECIAL DUTY.

GENERAL BOARD.

G. Dewey	Admiral	Senior member	Also Army and
C. E. Clark	Rear-admiral	Member	
C. S. Sperry	Captain	President Naval War College	Member Gener Navy Joint Board.
S. Schroeder	do	Chief intelligence officer	Do.
W. T. Swinburne	do	Member	l Board.
W. Swift	do	do	Also Army and
R. Wainwright	do	do	Do.
S. E. W. Kittelle	Lieutenant	Secretary	Navy Joint Board.

[a] Inspectors of guns, mounts, and ordnance material during process of manufacture.

EXHIBIT A.—*List of line and staff officers on duty at Washington, D. C., July 1, 1905*—Continued.

OFFICERS EMPLOYED ON SPECIAL DUTY—Continued.

DUTY CONNECTION WITH GENERAL BOARD.

Name.	Rank.	Paramount duty.	Additional duty, etc.
W. I. Chambers	Commander		Aid to the Admiral of the Navy.
S. S. Wood	Lieutenant-commander		
P. Andrews	Lieutenant		
E. H. Campbell	do		
BOARD ON AWARDS.			
S. B. Luce (ret.)	Rear-admiral	Senior member	
A. E. K. Benham (ret.)	do	Member	
F. M. Ramsay (ret.)	do	do	
R. R. Wallace (ret.)	do	do	
BOARD ON CHANGES IN NAVY-YARD, NEW YORK.			
F. Rodgers (ret.)	Rear-admiral	President	
A. E. Culver	Commander	Member	
LIGHT-HOUSE ESTABLISHMENT—LIGHT-HOUSE BOARD.			
B. P. Lamberton	Rear-admiral	Chairman	
Uriel Sebree	Captain	Secretary	
Albert Ross	do		
BOARD OF INSPECTION AND SURVEY.			
J. H. Dayton	Captain	President	Bureau Construction and Repair.
E. H. C. Leutze	do	Member	
I. S. K. Reeves	Commander	do	
T. M. Potts	do	do	
J. J. Woodward	Naval constructor, rank of captain.	do	

BUREAU OF FISHERIES.

C. R. Roelker	Rear-admiral (retired)		
Robert Platt	Commander (retired)		

STATE, WAR, AND NAVY DEPARTMENT BUILDING.

Geo. W. Baird	Rear-admiral (retired)	Superintendent	

DUTY WITH CIVIL SERVICE COMMISSION.

W. B. Bayley	Commander		

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908.*

NAVY DEPARTMENT

OFFICE OF THE SECRETARY.

Name.	Rank.	Paramount duty.	Additional duty, etc.
T. Williamson (retired)	Chief engineer	Naval pensions	
H. N. Manney (retired)	Rear-admiral	Special duty	
S. W. B. Diehl	Captain	do	
M. T. Endicott (retired)	Civil engineer, rank of rear admiral.	do	

OFFICE OF THE ASSISTANT SECRETARY.

A. E. Culver	Commander	Office of the Assistant Secretary	Naval militia.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY DEPARTMENT—Continued.

OFFICE OF THE JUDGE-ADVOCATE-GENERAL.

Name.	Rank.	Paramount duty.	Additional duty, etc.
E. H. Campbell	Captain	Judge-Advocate-General	
H. Phelps	Commander	Preparation of charges and revision of proceedings of general court-martial cases, etc.	
W. O. Hulme (retired)	do	Same as above, courts of inquiry, boards of inquest, etc.	
B. W. Wells (retired)	do	Examining boards, retiring boards, question of military law, regulations, etc.	

BUREAU OF YARDS AND DOCKS.

Name.	Rank.	Paramount duty.	Additional duty, etc.
R. C. Hollyday	Civil engineer with rank of rear-admiral.	Chief of Bureau.	
U. S. G. White	Civil engineer with rank of captain.	Permanently assigned as senior member board for examining candidates for positions under cognizance of the Bureau; keeps record all examinations except such as are filed in the office of Judge-Advocate-General; in charge of records relative technical and clerical force under the Bureau and its yard departments, and attends to the filling of places under these heads; examines all efficiency cards of employees.	
F. T. Chambers	Civil engineer with rank of lieutenant-commander.	Plans and specifications received from navy-yards or contractors and which do not require detailed calculations necessitating reference to the drafting room are passed upon by this officer for recommendation to Chief of Bureau; reviews all monthly and special reports from navy-yards and stations, and such other technical correspondence as may be referred to him.	Special duty, Departments of Agriculture and Justice.
H. R. Stanford	Civil engineer with rank of lieutenant.	Charged with the preparation of standard specifications; duties relating to centralization of power at various stations.	Such other duty as may be assigned from time to time.
F. R. Harris	do	Examination of proposals and recommendations for awards received from the Bureau of Supplies and Accounts; proposals received on Bureau contracts are referred to him for examination and recommendation to the Chief of Bureau; charge of everything pertaining to requisitions for material; in charge of correspondence regarding inspection work on contracts.	Do.
A. L. Parsons	Civil engineer with rank of lieutenant.	In charge of all assistants and draftsmen in the main drafting room and in the blueprint and file rooms in the Mills Building. Responsible for preparation of all plans and specifications which are directly assigned to him. All correspondence affecting specially selected contracts filed with him for attention.	Do.

BUREAU OF NAVIGATION.

J. E. Pillsbury	Rear admiral	Chief of Bureau	Ex officio member General Board, also Army and Navy Joint Board.
C. McR. Winslow	Commander	Assistant to Chief of Bureau and records of officers	Duty connected with General Board.
R. T. Mulligan	do	Detail officer	
W. S. Sims	do	Inspector of target practice	Aid to the President.
H. B. Wilson	do	Charge of enlisting men in the Navy	Recruiting.
J. M. Poyer, retired	do	Special duty, signal books	
W. R. Shoemaker	Lieutenant-commander	Connection with enlisted force	Do.
G. B. Bradshaw	do	Connection with target practice	Records.
C. L. Hussey	do	Readiness of ships for service	
D. F. Sellers	do	Movements of ships; diplomatic correspondence	
N. L. Jones	Lieutenant	Secret code	
W. C. Watts	do	Division of enlisted men and recruiting	
R. D. White	do	Records of target practice	

OFFICE OF NAVAL INTELLIGENCE.

R. P. Rodgers	Captain	Chief intelligence officer	Ex-officio member General Board, member board memorials Naval Academy.
H. H. Whittlesey (retired)	Lieutenant-commander	Assistant to chief intelligence officer, and staff intelligence officer employed in the collating and classifying of information from abroad.	
H. H. Hough	do	Staff intelligence officer, employed in collating and classifying of information from abroad.	
F. A. Traut	do	do	
R. K. Crank	do	do	
H. P. McIntosh (retired)	Lieutenant	do	
J. P. Jackson	do	do	

NAVAL EXAMINING BOARD.

A. R. Couden	Rear-admiral	President	Also naval retiring board; also special ordnance board.
E. K. Moore	Captain	Member	Also naval retiring board.
W. W. Kimball	do	do	Do.
F. H. Eldridge	Commander	do	Also Civil Service Commission.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY DEPARTMENT—Continued.

NAVAL RETIRING BOARD.

Name.	Rank.	Paramount duty.	Additional duty, etc.
D. Dickinson	Medical director with rank of captain.	Member	Also Naval Medical Examining Board.
T. H. Streets	do	do	Commanding naval hospital, Washington, D. C.

NAVAL AND MEDICAL EXAMINING BOARDS.

[Mills Building.]

A. F. Price	Medical director with rank of captain.	President	
W. A. McClurg	do	Member	

BUREAU OF MEDICINE AND SURGERY.

P. M. Rixey	Medical director with rank of rear-admiral.	Surgeon-general	
H. G. Beyer	Medical inspector with rank of commander.	Special duty	
W. C. Braisted	Surgeon with rank of lieutenant-commander.	Assistant to Chief of Bureau	
F. L. Pleadwell	do	In charge of supplies and accounts division	
R. M. Kennedy	do	In charge of division of records and pensions	
W. H. Bell	do	In charge of division of statistics and detail	

NAVAL DISPENSARY.

W. S. Dixon	Medical director with rank of captain.	Naval Dispensary	Attendance upon officers on duty in Washington, D. C.
C. T. Grayson	Passed assistant surgeon with rank of lieutenant.	do	

U. S. NAVAL MEDICAL SCHOOL.

STAFF.			
J. C. Wise	Medical director with rank of captain.	Charge of U. S. Naval Medical School	
J. D. Gatewood	Surgeon with rank of lieutenant-commander.	Naval Medical School	Instructor.
E. R. Stitt	do	do	Instructor; also medical examining board.
E. J. Grow	Surgeon	do	Do.
H. C. Curl	Surgeon with rank of lieutenant-commander.	do	Instructor; also Naval Medical School Hospital.
C. St. J. Butler	Passed assistant surgeon with rank of lieutenant.	do	Assistant instructor.
O. J. Mink	do	do	Do.
D. L. Wilson (retired)	Lieutenant-commander.	Special duty	
IN ATTENDANCE UPON THE COURSE OF INSTRUCTION.			
S. L. Higgins	Assistant surgeon with rank of lieutenant (junior grade).	Naval Medical School	Instruction.
R. J. Straeten	Assistant surgeon	do	Do.
J. T. Duhigg	do	do	Do.
F. H. Stibbens	do	do	Do.
R. Hayden	do	do	Do.
E. V. Valz	do	do	Do.
F. W. Smith	do	do	Do.
M. A. Stuart	do	do	Do.
F. X. Koltes	do	do	Do.
W. H. Short	do	do	Do.
H. L. Kelley	do	do	Do.
O. V. Huffman	do	do	Do.
J. T. Miller	do	do	Do.
G. B. Tribie	do	do	Do.
H. A. Garrison	do	do	Do.
M. E. Rose	do	do	Do.
C. G. Alderman	do	do	Do.
M. R. Hermesch	do	do	Do.
H. Boland	do	do	Do.
C. W. O. Bunker	Assistant surgeon with rank of lieutenant (junior grade).	do	Do.
H. F. Lawrence	Assistant surgeon	do	Do.
C. J. Holeman	do	do	Do.
G. D. Hale	do	do	Do.
A. B. Hayward	do	do	Do.
M. E. Higgins	do	do	Do.
D. A. Spear	do	do	Do.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY DEPARTMENT.

U. S. NAVAL MEDICAL SCHOOL—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
IN ATTENDANCE UPON THE COURSE OF INSTRUCTION—Continued.			
S. Bacon	Acting assistant surgeon with rank of lieutenant (junior grade).	Naval Medical School	Instruction.
B. F. Haines	Acting assistant surgeon	do	Do.
F. P. W. Hough	do	do	Do.
L. W. McGuire	do	do	Do.
K. C. Melhorn	do	do	Do.
J. A. Biello	do	do	Do.
J. C. Clayton	do	do	Do.
C. R. Morgan	do	do	Do.
G. C. Rhoades	do	do	Do.

U. S. NAVAL MEDICAL SCHOOL HOSPITAL.

STAFF.			
J. C. Boyd	Medical director with rank of captain.	Commanding Naval Medical School Hospital	President naval medical examining boards.
H. W. Smith	Passed assistant surgeon	Naval Medical School Hospital	Assistant.
A. B. Clifford	Passed assistant surgeon with rank of lieutenant.	do	Do.

U. S. NAVAL AND MEDICAL EXAMINING BOARDS.

J. F. Urie	Surgeon with rank of lieutenant-commander.	Member	

BUREAU OF SUPPLIES AND ACCOUNTS.

E. B. Rogers	Pay director, with rank of rear-admiral.	Paymaster-General and Chief of Bureau	
J. S. Carpenter	Pay inspector, with rank of commander.	Assistant to Chief of Bureau, to act in the absence of Chief of Bureau; general correspondence and supervision over office force and work of Bureau.	

J. A. Mudd	do	Handling special matters of importance relating to supplies and accounts not necessarily connected with the routine work of the Bureau.	
C. Conard	Paymaster, with rank of lieutenant-commander.	Correspondence relative to penalties on contracts; naval supply fund, and new accounting system.	
G. P. Dyer	do	Correspondence relative to supply of money, provisions, and clothing; requisitions and shipments of stores; supply ships; in charge editing "Memo. for the information of officers of the Pay Corps, etc."	
C. J. Peoples	do	In charge of contracts	
D. W. Nesbit	do	Preparation of indexed compilation of Comptroller's Decisions and court decisions affecting Navy pay and allowances; assistant in editing "Memo. for the information of officers of the Pay Corps, etc."	
F. R. Holt	Passed assistant paymaster, with rank of lieutenant.	Payment of travel claims: Deserters' roll	
D. C. Crowell	do	Assistant to officer in charge contracts; correspondence, etc	
F. H. Atkinson	Assistant paymaster, with rank of ensign.	Assistant to officer in charge contracts; opens bids and has immediate supervision preparation of contracts for signature.	

Officers of the Pay Corps on duty under the Bureau of Supplies and Accounts.

L. C. Kerr	Pay director, with rank of captain.	General Inspector of the Pay Corps; inspection of pay officers' accounts under direction of the Bureau: headquarters, Washington, D. C.	
T. H. Hicks	Pay inspector, with rank of commander.	General inspector of the Pay Corps; inspection of pay officers' accounts under direction of the Bureau; headquarters, Washington, D. C.	
S. McGowan	do	Special duty, accounts of the naval militia; under the office of Assistant Secretary.	Duty in the office of the Judge-Advocate-General.

BUREAU OF EQUIPMENT.

W. S. Cowles	Rear-admiral	Chief of Bureau	Board on Construction.
C. M. Chester (retired)	do	Duty in connection with solar eclipse of the sun, Aug. 30, 1905	
W. F. Halsey (retired)	Captain	General charge of repairs, reports, requisitions, equipage, supplies other than electrical, for vessels and stations, and correspondence relating thereto.	
G. W. Denfeld (retired)	Commander	Duty in connection with anchors and chains for the Navy	
C. Davis	Lieutenant-commander	Acting chief of Bureau; in charge of coal, coal depot construction, and wireless telegraphy.	
L. S. Thompson	do	Inspector of electrical appliances	
W. A. Moffett	do	Duty in connection with allowances for ships of the Navy, changes in new ships, distribution of chronometers.	
G. C. Sweet	Lieutenant	Assistant to Lieutenant-Commander Davis in wireless telegraph matters	
C. R. Miller	do	Assistant to inspector of electrical appliances	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY DEPARTMENT—Continued.

BUREAU OF EQUIPMENT—Continued.

Officers on special duty under the Bureau of Equipment outside of Washington, D. C.

Name.	Rank.	Paramount duty.	Additional duty, etc.
H. C. Kuenzli	Lieutenant-commander	Inspector of equipment, Schenectady, N. Y.	
A. S. Halstead	do	Inspector of equipment, San Francisco, Cal.	
R. Welles	do	Inspector of equipment, Quincy, Mass.	
W. W. Buchanan	Commander	Inspector of equipment, Newport News, Va.	
G. Mallison (retired)	do	Assistant inspector of equipment, Newport News, Va.	
D. F. Boyd	Lieutenant	Inspector of equipment, Philadelphia, Pa.	
F. M. Barber (retired)	Captain	Representative abroad of Bureau of Equipment in matters pertaining to wireless-telegraph service.	
G. H. Stafford (retired)	Commander	Inspector, California City Point coaling plant.	
A. C. Almy (retired)	do	Inspector, San Diego coaling plant.	
B. T. Walling	do	General inspector of equipment on the Atlantic coast and at works, General Electric Co., Schenectady, N. Y.	

U. S. NAVAL OBSERVATORY, WASHINGTON, D. C.

W. J. Barnette	Captain	Superintendent U. S. Naval Observatory	Member army and navy joint board.
A. G. Winterhalter	Commander	Assistant to superintendent head of department of nautical instruments and general storekeeper.	
E. E. Hayden	do	Head of department of chronometers and time service.	
T. Snowden	do	Superintendent of compasses.	
A. N. Skinner (retired)	Professor of mathematics with rank of commander.	Preparation for publi ation of Washington Observations of Astr. Gesellschaft, Zone 14° to 18°.	
M. Updegraff	Professor of mathematics with rank of lieutenant.	Director of the Nautical Almanac.	
W. S. Eichelberger	do	Head of department of astronomical observations.	
F. B. Littell	do	Department of astronomical observations; in charge of altazimuth.	

HYDROGRAPHIC OFFICE.

C. C. Rogers	Commander	Hydrographer.	
H. H. Barroll (retired)	do	In charge of division of chart supply; directs the issue of Hydrographic, Office, Coast Survey, and British Admiralty charts to ships of the Navy; prepares chart catalogues for publication and directs their issue; and prepares all correspondence relating to charts and catalogues.	

H. Kimmell (retired)	do	In charge of division of sailing directions. Has charge of the preparation and revision of all Sailing Directions and Light Lists, and their Supplements; the International Signal Code, and Notices to Mariners. Has charge also of the archives, library of reference, the outfits of navigational books for navigators and all correspondence relating to the issue of the foregoing publications.	
G. F. Cooper	Lieutenant-commander	Assistant division of Sailing Directions; preparation and revision of Sailing Directions for publication.	

Officers in charge of the branch hydrographic offices in the United States.

[Each of the following-named officers are in charge of branch hydrographic offices in the United States, and their duties consist in collecting information for the publications of the main office at Washington, D. C., and with the distribution to the mercantile marine and to mariners in general of the published results in Notices to Mariners, Hydrographic Office Bulletin, Pilot Charts, and other forms; with the care and operation of time balls; with the rating of ship's chronometers when desired, and where necessary with instruction of masters of vessels in navigation and other technical subjects connected with the safety of vessels at sea.]

W. G. Richardson (retired)	Ensign	In charge of the branch hydrographic office, Boston, Mass.	
R. Hunt (retired)	Lieutenant	In charge of the branch hydrographic office, New York, N. Y.	
H. M. Jacoby (retired)	do	In charge of the branch hydrographic office, Philadelphia, Pa.	Court-martial duty, navy-yard, League Island, Pa.
J. Franklin (retired)	do	In charge of the branch hydrographic office, Baltimore, Md.	
C. Webster (retired	Lieutenant-commander	In charge of the branch hydrographic office, Norfolk, Va.	
J. C. Soley (retired)	Lieutenant	In charge of the bracnh hydrographic office, New Orleans, La.	
J. C. Burnett (retired)	do	In charge of the branch hydrographic office, San Francisco, Cal.	
A. B. Wycoff (retired)	do	In charge of the branch hydrographic office, Port Townsend, Wash.	
W. L. Varnum (retired)	Ensign	In charge of the branch hydrographic office, Cleveland, Ohio	

INSPECTION DUTY.

A. C. Dieffenbach (retired).	Commander	Bethlehem Steel Co. and Taylor Iron and Steel Co.	
J. C. Leonard	Lieutenant commander	Cramp & Sons, New York Shipbuilding Co., Paul S. Reeves & Sons, and Queen & Co.	
G. S. Galbraith		Assistant at Cramp & Sons, New York Shipbuilding Co., Paul S. Reeves & Sons, and Queen & Co.	
W. C. Eaton	Captain	Crucible Steel Co. Atha Steel Casting Co. and I. G. Johnson & Co.	Also duty under Bureau Steam Engineering.
W. J. Sears (retired)	Commander	Assistant at Crucible Steel Co., Atha Steel Casting Co., and I. G. Johnson & Co.	
V. Blue	Lieutenant-commander	Newport News Ship Building and Dry Dock Co., Newport News, Va.	
F. H. Clark, jr	do	Watervliet Arsenal, American and British Manufacturing Co., J. B. Chapman & Co., Pratt & Whitney Co., Scovill Manufacturing Co., Colts Arms Co., Winchester Repeating Arms Co., Union Metallic Cartridge Co., and U. S. Rapid Fire Gun and Power Co.	
B. B. McCormick	do	E. W. Bliss Co.	
W. S. Miller	Lieutenant	Assistant at E. W. Bliss Co	
O. Hill	Ensign	do	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY DEPARTMENT—Continued.

INSPECTION DUTY—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
F. W. Toppan (retired)	Ensign	Assistant at E. W. Bliss Co.	
H. C. Kuenzli	Lieutenant-commander	General Electric Co., Schenectady, N Y	
J. H. Rohrbacher (retired)	Commander	Carnegie Steel Co., Driggs-Seabury Ordnance, Corporation, Union Steel Casting Co., J. B. Semple & Co., Platt Iron Works, New Jersey Foundry and Machine Co.	
C. L. Arnold	Lieutenant	Fore River Ship & Engine Co. and Sub-Target Gun Co	
A. S. Halstead	Lieutenant-commander	Union Iron Works	
W. A. Gill	Commander	Midvale Steel Co., Carpenter Steel Co., Pennsylvania Steel Co., American Steel Foundry & Machine Co.	

INSPECTION DUTY.

A. St. C. Smith	Lieutenant	Dupont Powder Co., Laflin & Rand Powder Co., and International Smokeless Powder and Chemical Co.	
C. Wells	Lieutenant-commander	Whitehead Torpedo Works, Weymouth, England	

BUREAU OF STEAM ENGINEERING.

C. W. Rae[a]	Rear-admiral	Chief of Bureau	Member board on construction.
A. F. Dixon[a]	Captain	Assistant to Chief of Bureau	Member board on construction during absence of Engineer-in-Chief.
W. M. Parks[a]	Commander	Supervision of the inspection in the nine inspection districts of the Bureau of all material entering into the construction of naval machinery.	Preparation of specifications for material. Occasionally member of board for the trial of new vessels.
R. S. Griffin[a]	do	Details of design of machinery for vessels under construction	Occasional member of board for the trial of new vessels.
F. C. Biegg[a]	do	Preparation of allowance of stores for ships and supervision of requisitions for supplies. Inspection of steam logs and preparation of coal-endurance data.	General duties of Bureau, not classified.
B. C. Bryan[a]	do	In charge of class of officers under special instruction in engineering	Investigation, for purposes of design, of data from trials of new ships.
H. P. Norton[a]	do	In charge of designing and drafting division	Occasionally member of board for the trial of new vessels.

W. S. Smith [a]	do	Details of design of machinery for vessels under construction	Occasionally member of board for the trial of new vessels; member of submarine board; member board changes in machinery of vessels at Newport News, Va.
W. W. White (retired) [a]	do	Assistant to officer in charge of designing and drafting division	Explosion engines for submarine and launches. Occasionally member of board for the trial of new vessels.
T. C. Fenton (retired)	do	General supervision of inspection of machinery building by contract	Do.
C. W. Dyson	Lieutenant-commander	Assistant to officer in charge of designing and drafting division. Calculations, preparation of data, etc.	Do.
C. N. Offley	do	Preparation of allowance of stores and supervision of requisitions for supplies. Inspection of steam logs and preparation of coal endurance data.	Do.
J. B. Gilmer	Lieutenant	General supervision of work at navy-yards on machinery of ships in commission.	
Special duty.			
P. E. Dampman	Ensign	Under instruction	Do.
Inspection duty.			
J. A. B. Smith (retired)	Rear-admiral	General inspector of machinery, headquarters, Brooklyn, N. Y	President all boards changes in machinery building by contract.
H. N. Stevenson (retired)	Commodore	Inspector of machinery at Union Iron Works, San Francisco, Cal	
J. H. Perry (retired)	Captain	Assistant general inspector of machinery, headquarters, Brooklyn, N. Y	Member all boards on changes in machinery building by contract
R. G. Denig (retired) [a]	do	Inspector of engineer material at Philadelphia, Pa., and vicinity, and at Harrisburg, Pa.	
G. B. Ransom [a]	do	Inspector of machinery at Newport News, Va	
W. C. Eaton [a]	do	Inspector of engineer material, eastern New York and New Jersey districts, headquarters, Brooklyn, N. Y.	
A. V. Zane [a]	do	Inspector of machinery at Cramp & Sons, Philadelphia, Pa	Member board changes in machinery New York Shipbuilding Co.
G. S. Willits [a]	Commander	Inspector of machinery at the New York Shipbuilding Co	Member board changes in machinery Cramp & Sons.
W. N. Little [a]	do	Inspector of engineering material for middle West district, Shelby, Ohio	
G. W. McElroy [a]	do	Inspector of machinery, Babcock & Wilcox Co., Bayonne, N. J	
J. L. Gow [a]	do	Inspector of machinery, Fore River Shipbuilding Co., Quincy, Mass	
W. J. Sears (retired)	do	Assistant inspector of engineering material and ordnance, Brooklyn, N. Y., and Harrison, N. J.	
F. C. Bowers [a]	do	Inspector of engineering material for Connecticut district, Hartford, Conn	
H. Hall [a]	do	Inspector of machinery, Bath Iron Works, Bath, Me	
T. W. Kinkaid [a]	do	Inspector of engineering material, Chester district, Chester, Pa	
G. Kaemmerling [a]	do	Inspector of engineering material, Massachusetts district, Boston, Mass	
W. C. Herbert	Lieutenant-commander	Assistant to the inspector of machinery, New York Shipbuilding Co., Camden, N. J.	
J. E. Palmer (retired) [a]	Commander	Inspector of engineering material, Pittsburg district Pittsburg, Pa	
A. C. Dieffenbach (retired)	do	Inspector of engineering material, Bethlehem Steel Co., South Bethlehem, Pa	

[a] In accordance with law, officers opposite whose names this mark appears perform engineering duty on shore only.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY DEPARTMENT—Continued.

BUREAU OF CONSTRUCTION AND REPAIR.

Name.	Rank.	Paramount duty.	Additional duty, etc.
W. L. Capps	Chief Constructor, with rank of rear-admiral.	In general charge of all work under the cognizance of the Bureau of Construction and Repair; member of the board on construction.	
J. H. Linnard	Naval constructor, with rank of captain.	Senior assistant to the Chief Constructor, and during the latter's absence, in immediate charge of all technical work, including representation of the Bureau on the board of construction. This officer also has immediate charge of all questions concerning assignment of civil employees under the Bureau of Construction and Repair; usually serves as president of all examining boards for civil technical employees when examinations are held in Washington, and in any event, examines all reports of similar boards when examinations are held elsewhere; also, usually serves as president of examining boards for the promotion of officers in the corps of naval constructors; has immediate supervision over all changes and reports thereon for vessels under construction, and examines reports of boards on changes. He is also charged with the preparation of data and reports concerning controversial matters and claims of all kinds made by contractors in connection with vessels under construction; supervision of reports and estimates in connection with new vessels, and bills for payments on ships building by contract; also general supervision of accounts of vessels under construction; general miscellaneous duties as senior technical assistant to the Chief Constructor as assigned from time to time. In addition to his duties at the Bureau, this officer, by reason of the great scarcity of officers in the corps of of naval constructors, is assigned as superintending constructor at two shipyards on the Delaware River, being assisted at each of these yards by a junior officer of the corps. These duties consume from one to two days each week.	
D. W. Taylor	Naval constructor with rank of captain.	This officer is the second senior assistant to the chief constructor, and has immediate charge of all work at the experimental model basin at the navy-yard, Washington; also other miscellaneous experimental work directed to be performed at that yard, from time to time, by the chief constructor. His duties also include the consideration of miscellaneous technical matters referred to him, and investigations of special questions as directed by the chief constructor, most of such work being in connection with new designs of naval vessels. All communications from private persons, suggesting improvements or ideas in connection with naval vessels are also usually referred to this officer. He is also a member of the boards to determine the cost of changes authorized on 11 naval vessels building under contract at the shipyards of Wm. Cramp & Sons Ship and Engine Building Co., the New York Shipbuilding Co., and the Newport News Shipbuilding and Dry Dock Co. These duties necessitate his frequently absenting himself from his duties in Washington. In addition to the above duties, he is detailed from time to time, as the necessities of the service demand, to represent the Bureau on various boards and for duty as member	

		of examining boards. In immediate charge of design and drafting work plans, specifications, and calculations pertaining thereto. In this connection has general supervision of the drafting force and the distribution of the technical work performed in the drawing office. He is also charged with the preparation of allowance lists on new vessels; preparation of circulars defining chief characteristics of vessels, and general supervision over work relating to the electric auxiliaries under cognizance of the Bureau; criticism of plans, estimates and requisitions for work relating to the improvement of construction plants at navy-yards, and the preparation of standard plans, specifications and instructions for same under the Bureau of Construction and Repair, calculation and preparation of technical data as directed by the chief constructor for use in the Bureau's annual report. or otherwise.
R. Stocker	Naval constructor, with rank commander.	This officer has been attached to the bureau for some time, but has had to devote practically his entire energies to the work of the board of inspection and survey as the representative of this bureau on that board, and in the performance of these duties he is immediately concerned in the military inspection of all vessels in commission and in preliminary and final trials of all contract-built vessels.
D. C. Nutting	Naval constructor, with rank lieutenant-commander.	This officer is assistant to the chief constructor in all matters relating to repairs of vessels of the fleet and vessels undergoing extensive miscellaneous repairs at navy-yards, and has immediate charge of all reports and estimates in connection therewith; passes on all requisitions for material, etc., required for carrying on the above work; consults with representatives of other bureaus in regard thereto. He also prepares memoranda for the action of the chief of bureau with respect to boards of survey of vessels; also miscellaneous reports involving repairs to vessels, their equipage and fittings; also has general supervision over allowance lists and requisitions for vessels in the naval service, and performs such special work and service as a member of various boards as may be directed from time to time. This officer also has general supervision of inspection of hull material.
S. F. Smith	Naval constructor, rank of lieutenant.	This officer was ordered to the Bureau with the view of performing some of the work hitherto required of other officers. It became necessary to detail him for duty in the Department of Justice in connection with preparation of technical data in relation to claims arising out of changes in the plans of certain vessels built during and shortly after the close of the civil war. Practically all of his time is taken up with this duty. He also represents the Bureau at Indian Head in tests of heavy plating for protective decks and bulkheads.
H. Williams	Assistant naval constructor, rank of lieutenant.	This officer passes on matters relating to requisitions for and purchase of materials; placing of contracts; preparation of standard specifications and tests; also passes on allowance lists for vessels; ship's requisitions for supplies and equipage; surveys and work in connection with the inspection of all material entering into the hulls of vessels.
W. McEntee	do	This officer assists Naval Constructor Taylor in carrying on experimental work at the experimental model basin; assists also in technical work and computations in the drafting room. He is also charged with looking up data and preparing special reports for the Chief Constructor from time to time, as directed by him.

NOTE.—Naval Constructor R. H. Robinson, U. S. Navy, though attached to the Bureau, is now on temporary duty with the North Atlantic Fleet.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY DEPARTMENT—Continued.

BUREAU OF CONSTRUCTION AND REPAIRS—Continued.

List of officers of the Construction Corps, on special duty under the Bureau of Construction and Repair, Navy Department, January 1, 1908.

Name.	Rank.	Paramount duty.	Additional duty, etc.
J. A. Spilman	Assistant naval constructor, with rank of lieutenant.	Superintending constructor, Bath Iron Works, Bath, Me	Vessels building for the Navy at said works.
F. D. Hall	do	Assistant to the superintending constructor, Wm. Cramp & Sons Ship & Engine Building Co., Philadelphia, Pa.	Do.
H. G. Gillmor	Naval constructor, with rank of lieutenant-commander.	Superintending constructor, Fore River Shipbuilding Co., Quincy, Mass	Do.
G. S. Radford	Assistant naval constructor, with rank of lieutenant (junior grade).	Assistant	Do.
H. M. Gleason	Assistant naval constructor, with rank of lieutenant.	Assistant to the superintending constructor, Neafie & Levy, Philadelphia, Pa.	Do.
G. H. Rock	Naval constructor, with rank of commander.	Superintending constructor, works of the Newport News Shipbuilding and Dry Dock Co., Newport News, Va.	Do.
H. C. Richardson	Assistant naval constructor, with rank of lieutenant (junior grade).	Assistant	Do.
W. G. Groesbeck	Naval constructor, with rank of lieutenant.	Assistant to the superintending constructor, New York Shipbuilding Co., Camden, N. J.	Do.
W. B. Fogarty	Assistant naval constructor, with rank of lieutenant.	do	Do.
J. G. Tawresey, retired	Naval constructor, with rank of commander.	Superintending constructor, Union Iron Works, San Francisco, Cal	Do.
T. F. Ruhm	Naval constructor, with rank of lieutenant-commander.	Superintending constructor, Moran Bros. Co., Seattle, Wash	Do.

BUREAU OF ORDNANCE.

N. E. Mason	Rear-admiral	Chief of Bureau	Board on construction.
W. I. Chambers	Commander	Assistant Chief of Bureau; keeps in touch with the general policy of the bureau, and familiar with the bureau's current work; examination of all general surveys of vessels and recommendation as to repairs or modification	

		of armament; consideration of target practice reports, and changes to be recommended to the Department; the consideration of all matters relating to magazines on shore, their location, expansion, improvement and repairs; contracts for all buildings, machinery, tools, etc., required at shore stations.	
E. Simpson	do	Armor: specifications, contracts, manufacture, tests, and installation on board ship.	
C. M. Knepper	Lieutenant-commander	do	
V. O. Chase	do	Guns: their design and construction, including breech mechanisms, firing devices, gas ejectors and fittings, and the preparation of specifications and contracts for the manufacture of finished guns, and of forgings and other materials required for their construction.	Member joint army and navy board on gun forgings.
C. A. Brand	do	Turret work, except guns; including the design, manufacture, and repair of turret mounts, sights, ammunition hoists, rammers and electrical apparatus.	
G. W. Williams	do	Torpedo outfits: Including torpedoes and torpedo tubes; their design, specifications, manufacture, tests, and contracts for their purchase, their installation on board ship and service-practice reports thereon; naval defense mines and countermines their design, construction, etc.; gun cotton, its specifications, purchase, manufacture, and storage; fire-control apparatus; interior communication and its installation on board ship; range finders, their design, purchase, and installation.	
H. B. Price	do	Gun mounts and sights, except those in turrets and for field and machine guns; their design, manufacture, tests, installation, etc.	
T. C. Hart	Lieutenant	Ammunition: The specifications for the manufacture and tests of all powders and explosives (except gun cotton), projectiles, fuzes, primers, cartridge and burster bags, the proper method of assembling, care, handling, and storage for same ashore and afloat, ordnance work in connection with all ammunition hoists other than turret hoists.	Member joint army and navy board on smokeless powder.
W. McDowell	do	Supplies and miscellaneous articles, including the preparation of allowance books, the assembling of ships' outfits, ships' and yards' surveys and requisitions, distribution and storage of all manufactured articles, arrangement of ordnance store rooms and armories and their fittings, the purchase and manufacture of all accessories and miscellaneous articles, including small arms and equipments, distributing ammunition to ships, manufacture and distribution of targets, small-arm cartridges, drill guns, field guns, and apparatus for the instruction of gun pointers.	
A. C. Pickens	Ensign	Under instruction in ordnance to carry out the policy of the Department to provide a limited number of officers especially trained in ordnance subjects to carry on work in connection with the design, manufacture, inspection, tests, and installation of ordnance apparatus.	
R. E. Ingersoll	do	do	
Special duty.			
P. R. Alger	Professor of mathematics, with rank of captain.	Special board on ordnance, necessary for the study and determination of ordnance problems for the guidance of the Bureau.	Member army and navy joint board on gun forgings.
Inspection duty.			
K. Niles	Captain	General inspector of ordnance	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS.

UNITED STATES NAVY YARD, PORTSMOUTH, N. H.

Name.	Rank.	Paramount duty.	Additional duty, etc.
G. A. Bicknell	Rear-admiral	Commandant	Commandant first naval district.
J. A. Ring	Pay director, with rank of captain.	Purchasing pay officer	
C. P. Rees	Captain	Captain of the yard	Aid to commandant; president of general court-martial; head of all boards of surveys (ships); inspection of ships in ordinary; general supervision of navy-yard, docks, wharves, etc., all departments; senior member board of labor employment.
Frank Thompson	Chaplain, with rank of captain.	Chaplain	Recorder of board of labor employment.
Albert W. Stahl	Naval constructor, with rank of captain.	Head of department of construction and repair	Member of boards of surveys and examination; member of board on changes, Bath Iron Works, Bath, Me.
J. M. Steele	Medical inspector, with rank of commander.	Medical officer of yard	Command of naval hospital; member of board of medical survey.
J. R. Edwards	Commander	Head of department of steam engineering	Member of boards of surveys and examination; general supervision of all steam appliances in all departments; member of board of inspection.
M. M. Ramsay	Paymaster, with rank of lieutenant-commander.	General storekeeper	
A. B. Hoff	Lieutenant-commander	Head of department of equipment and inspector of ordnance	Inspector of ordnance and equipment, Bath Iron Works, Bath, Me.; officer in charge of recruiting; member of board of inspection for equipment and ordnance departments.
G. F. Freeman	Passed assistant surgeon with rank of lieutenant.	Assistant to medical officer of the yard	
C. W. Parks	do	Head of department of yards and docks	When assigned by commandant.
J. W. G. Walker	Civil engineer	Assistant to the head of department of yards and docks	Member of board of labor employment; member of board of inspection for department of yards and docks.
A. F. H. Yates	Lieutenant	Duty at Bath Iron Works, Bath, Me., in connection with the U. S. S. Chester.	

A. Hovey-King	Passed assistant paymaster with rank of lieutenant.	Pay officer for yard craft, auxiliaries, etc	On U. S. S. Southery.
W. D. Owens	Passed assistant surgeon with rank of lieutenant.	Assistant to medical officer of yard	Do.
H. B. Worden	Passed assistant paymaster with rank of lieutenant (junior grade).	Assistant to general storekeeper	Member of board of inspection for supplies and accounts department.
Raymond B. Westlake	do	Yard paymaster	Member of board of inspection; member of general court-martial.

NAVAL STATION, BOSTON, MASS.

Wm. Swift	Captain	Commandant	
Wm. A. Marshall	do	Captain of yard	Senior member labor board.
W. G. Cutler	Captain (retired)	Equipment officer	
Wm. Winder	do	President general court-martial	
Geo. E. Bird	Commander	Head of steam engineering department	
J. H. Shipley	do	Ordnance officer	
H. E. Parmenter	Commander (retired)	Assistant equipment officer	Senior member paint board; member labor board.
C. P. Plunkett	Lieutenant-commander	General court-martial duty	Recorder labor board.
Walter Ball	do	Assistant to steam engineering department	
J. M. Edgar	Surgeon, with rank of lieutenant-commander.	Medical officer of yard	
C. S. Williams	Pay inspector, with rank of commander.	General storekeeper	
H. F. Stevens	Paymaster, with rank of lieutenant-commander.	Pay officer of yard	
Wm. B. Rogers	do	Assistant to general storekeeper	
G. R. Crapo	Assistant paymaster, with rank of lieutenant (junior grade).	do	General court-martial duty.
H. E. Rhoades	Passed assistant engineer (retired), rank of lieutenant (junior grade).	Assistant to steam engineering department	Senior permanent member board of inspection.
J. McC. Bellows	Chaplain, rank of lieutenant.	Prison, hospital	Wabash.
Elliot Snow	Naval constructor, rank of commander.	Head of construction and repair department	
E. F. Eggert	Naval constructor, rank of lieutenant.	Assistant to naval constructor	Member labor board.
I. I. Yates	Assistant naval constructor, rank of lieutenant (junior grade).	do	Paint board.
Fred Thompson	Civil engineer, rank of lieutenant.	Head of yards and docks department	
G. S. Burrell	Assistant civil engineer, rank of ensign.	Assistant to civil engineer	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVAL STATION, BOSTON, MASS.—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
Under instruction at Massachusetts Institute of Technology.			
G. C. Westervelt	Assistant naval constructor, rank of lieutenant (junior grade).		
E. G. Kintner	do		
A. H. Van Keuren	do		
P. H. Fretz	do		
R. W. Ryden	do		
F. G. Coburn	do		
W. P. Druley	do		
C. A. Harrington	do		
J. E. Otterson	do		
R. B. Hilliard	Ensign		
H. S. Howard	do		
E. O. Fitch, jr	do		
L. S. Bordner	do		
J. C. Sweeney	do		
J. A. Gawne	do		
A. B. Court	do		
Naval hospital, Chelsea, Mass.			
H. E. Ames	Medical inspector, rank of commander.	In command	
G. H. Barber	Surgeon, rank of lieutenant-commander.	Assistant	
G. S. Hathaway	Assistant surgeon, rank of lieutenant (junior grade).	do	
J. A. Toulon	do	do	
Navy pay office.			
C. W. Littlefield	Pay director, rank of captain	In charge	

Recruiting station, Boston.			
H. G. O. Colby	Captain	In charge	
E. Z. Derr	Medical inspector, rank of commander.	Substation, Providence, R. I.	
H. L. Law	Surgeon (retired), rank of lieutenant-commander.	Substation, Hartford, Conn.	
J. W. Baker	do	Examining surgeon, Boston office	Also marine recruiting office, Boston.

NAVAL WAR COLLEGE.

John P. Merrell	Rear-admiral	President of the college	Commandant, second naval district; member of general board.
J. H. Oliver	Commander	Member of college staff; senior assistant to the president, having charge of buildings and grounds, also supervision civil employees.	
W. B. Fletcher	do	Member of college staff, having charge of enlisted personnel and college boats.	Also member of permanent general court-martial at naval training station.
C. H. Arnold	Captain	Duty in connection with college; pursuing a course of professional study and reading at college; participates in conferences of staff.	
W. L. Rodgers	Commander	Duty in connection with college; special duty as naval advisor to Army War College at Washington during winter; member of college staff during summer conferences at Naval War College.	
S. B. Luce	Rear-admiral (retired)	Special duty in connection with War College; assists in work of college, principally in advisory capacity; lectures before summer conferences of officers at the college.	
W McC. Little	Captain (retired)	Duty in connection with college; takes active part in all work of the college, particularly in study and investigation of questions of naval tactics; renders valuable service as translator from current French, Spanish, and Italian publications.	

NAVAL TORPEDO STATION, NEWPORT, R. I.

Albert Gleaves	Commander	Inspector of ordnance, in charge	
T J. Senn	Lieutenant-commander	Executive officer	
E. S. Kellogg	do	In charge of shops	
A. Kautz	Lieutenant	In charge of air compressors, wireless telegraph, and books and returns of station torpedo boats.	General court-martial duty at training station.
J. V. Babcock	do	Torpedo officer; in charge of torpedo experiments	
A. C. H. Russell	Surgeon, rank of lieutenant-commander.	Temporary medical officer	
Lewis Morris	do	Medical officer	
Joseph Fyffe	Paymaster, rank of lieutenant.	Pay officer and general storekeeper	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVAL TORPEDO STATION, NEWPORT, R. I.—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
Headquarters second naval district, Narragansett Bay, R. I.			
A. C. Dillingham	Captain	Superintendent naval training service	
C. G. Calkins	Captain (retired)	President of permanent general court-martial at naval training station	
Attached to naval hospital.			
L. G. Heneberger	Medical inspector, rank of commander.	In command of the hospital	
Harry F. Hull	Assistant surgeon, rank of lieutenant (junior grade).	Senior assistant and supervising surgeon; responsible for care and treatment of sick and management of hospital.	
D. G. Sutton	do	Junior assistant surgeon; assists senior officers in their duties, particularly in care of sick.	
Navy pay office.			
H. E. Drury	Pay director, rank of captain.	Purchasing and disbursing pay officer, Navy pay office, Newport, R. I.	
United States Naval Training Station, Newport, R. I.			
W. F. Fullam	Commander	Commandant of station	
W. W. Phelps	Lieutenant-commander	Executive officer of station and of station ships	
F. L. Sandoz		Equipment and navigation officer for station and station ships	Senior member of summary court-martial, of inspection and hull boards, and of board to audit chief petty officers' messes.
H. K. Cage	Lieutenant	Engineer officer of station and station ships	Member general court-martial.
C. B. Landenberger	do	In charge of Cumberland	Member summary court-martial.
C. DeW. Brownell	Surgeon, rank of lieutenant-commander.	Senior medical officer	
M. K. Johnson	do	Sick call at barracks C; duty as medical officer of the day	
L. W. Bishop	Passed assistant surgeon, rank of lieutenant.	Examination of newcomers; duty as medical officer of the day	
E. F. Hall	Paymaster, rank of lieutenant.	In charge of cooks' school	
F. P. Sackett	do	Station paymaster and general storekeeper	

E. H. Cope	Passed assistant paymaster, rank of lieutenant.	Commissary officer	Do.
W. N. Hughes	Assistant paymaster, rank of ensign.	In charge of apprentice seamen accounts	
W. G. Cassard	Chaplain, rank of commander.	In charge of library and school instruction	
E. E. McDonald	Chaplain, rank of lieutenant.	Chaplain	
R. E. Bakenhus	Civil engineer, rank of lieutenant.	In charge of civil engineer work at station	

NAVY YARD AND STATION, NEW YORK, N. Y.

C. F. Goodrich	Rear-admiral	Commandant, also commandant third naval district	
F. W. Kellogg	Commander	Aid to commandant	
W. G. Isaacs	Chaplain	Duty of chaplain	
W. F. Bricker	Lieutenant	Junior aid to commandant	
J. D. Adams	Captain	Captain of the yard	
L. E. Gregory	Civil engineer, rank of lieutenant.	Head of department of yards and docks	
L. F. Bellinger	do	Assistant to the head of department of yards and docks	
E. H. Brownell	do	do	
H. George	Lieutenant-commander	Acting equipment officer	
R. H. Leigh	do	In charge of the electrical class	
W. S. Crosley	do	Assistant to the equipment officer	
A. W. Marshall	Lieutenant	do	
H. Morrell	Captain	Ordnance officer	
F. L. Sawyer	Lieutenant-commander	Assistant to the ordnance officer	
W. Braunersreuther	Commander	Inspector of ordnance, Iona Island	
W. J. Baxter	Naval constructor, rank of captain.	Head of the department of construction and repair	
W. P. Robert	Naval constructor, rank of lieutenant-commander.	Assistant	
W. B. Ferguson	Assistant naval constructor, rank of lieutenant.	do	
J. L. Ackerson	Assistant naval constructor, rank of lieutenant (junior grade).	do	
E. S. Land	do	do	
R. T. Hall	Commander	Head of the department of steam engineering	
F. H. Bailey	do	Assistant	
E. Theiss	do	do	
S. H. R. Doyle	Lieutenant	do	
R. T. Menner	do	Assistant to the department of steam engineering	
W. B. Day, retired	Passed assistant engineer, rank of lieutenant.	Assistant	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVY YARD AND STATION, NEW YORK, N. Y.—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
E. H. Green	Medical inspector, rank of commander.	Surgeon of the yard	
G. B. H. Harmon	Medical director, rank of captain.	In command U. S. naval hospital	
G. Rothganger	Surgeon, rank of lieutenant-commander.	Supervising surgeon	
B. G. Parker	do	Ward and officer of day duties	
J. S. Taylor	do	do	
W. N. McDonell	Passed assistant surgeon, rank of lieutenant.	do	
P. Fitzsimons	Medical director, rank of captain.	In command U. S. naval medical supply depot	
R. Fraser	Pay director, rank of captain.	General storekeeper	
G. C. Schafer	Paymaster, rank of lieutenant.	In charge of naval supply fund stores	
E. C. Tobey	do	Assistant to the general storekeeper	
V. S. Jackson	do	In charge of rearrangement of supplies in store	
E. C. Gudger	Passed assistant paymaster, rank of lieutenant.	In charge of contracts, requisitions, public bills, etc.	
N. B. Farwell	do	In charge of shipments, and surveying officer	
F. T. Arms	Pay inspector, rank of commander.	Paymaster of the yard	Senior member board of scales
T. S. Jewett	do	In charge of provisions and clothing depot	
F. T. Watrous	Passed assistant paymaster, rank of lieutenant.	Assistant	
A. F. Huntington	Paymaster, rank of lieutenant.	In charge of the clothing factory	Recorder board of wages.
C. G. Mayo	Passed assistant paymaster, rank of lieutenant.	Assistant	
Y. Noel	Commander	Board of inspection	Member paint board.
H. C. Poundstone	Commander (retired)	Board on labor employment	
Navy pay office, New York, N. Y.			
L. G. Boggs	Pay director, rank of captain.	In charge of the navy pay office	
J. Maupin	Passed assistant paymaster, rank of lieutenant.	Assistant	
N. W. Grant	do	do	

Navy recruiting station.			
B. A. Fiske	Captain	In charge of navy recruiting station	
T. Woolverton	Medical director (retired), rank of captain.	Duty	
O. D. Norton	Surgeon, rank of lieutenant-commander.	do	Also medical attendance on officers not otherwise provided.
General court-martial duty at yard.			
G. Blocklinger	Captain	President	
J. E. Roller	Captain (retired)	Member	
L. C. Heilner	Captain	do	
A. Moritz	Commander (retired)	do	
T. W. Ryan	do	do	
C. F. Nagle	Chief engineer (retired), rank of lieutenant.	do	

War Department—Office of the supervisor of the harbor of New York.

D. C. Hanrahan	Lieutenant	Supervisor	

NAVY YARD AND STATION, LEAGUE ISLAND, PA.

E. C. Pendleton	Rear-admiral	Commandant; also commandant fourth naval district	
H. G. Macfarland	Lieutenant-commander	Second in command fourth naval district	
M. H. Simons, jr	Lieutenant	Aid to commandant	
C. Q. Wright	Chaplain, rank of captain	Chaplain of the yard	
F. A. Wilner	Captain	Captain of the yard	Senior member board on labor employment.
F. O. Maxson	Civil engineer, rank of captain.	Head department of yards and docks	Member board of inspection.
R. Whitman	Assistant civil engineer, rank of lieutenant (junior grade).	Assistant	
M. L. Wood	Commander	Equipment officer	Senior member paint board.
J. S. McKean	Lieutenant-commander	Ordnance officer	
D. W. Coffman	Commander	Inspector ordnance in charge of naval magazine, Fort Mifflin, Pa	
H. M. Gleason	Assistant naval constructor, rank of lieutenant.	Head department of construction and repair	Member board on labor employment; also paint board.
J. Reed, jr	Assistant naval constructor, rank of lieutenant (junior grade).	Assistant	Member board of inspection.
J. K. Barton	Captain	Head department of steam engineering	Member board on labor employment.
L. Shane	Lieutenant	Assistant	Member board of inspection.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1903*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVY YARD AND STATION, LEAGUE ISLAND, PA.—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
O. Diehl	Surgeon, rank of lieutenant-commander.	Surgeon of the yard	
R. Spear	do	Assistant	
W. W. Gilmer	Lieutenant-commander	Charge of the navy recruiting station, Philadelphia, Pa	
E. W. Bonnafon	Paymaster, rank of lieutenant.	General storekeeper	
D. Potter	do	Assistant to general storekeeper	General court-martial duty.
J. R. Hornberger	Passed assistant paymaster, rank of lieutenant.	do	Member board of inspection.
R. Spear	Assistant paymaster, rank of ensign.	do	
T. J. Arms	Paymaster, rank of lieutenant.	Paymaster of the yard and station	
C. H. Harlow	Commander	Senior member board of inspection	Member general court-martial.
W. H. Webb	Commander (retired)	Recorder, board on labor employment	Do.
R. T. M. Ball	Pay director, rank of captain.	In charge of the navy pay office, Philadelphia, Pa	
J. C. Spear	Medical director (retired), rank of captain.	Examining surgeon, marine recruiting station, Philadelphia, Pa	In attendance on officers not otherwise provided for.
A. C. Engard	Chief engineer (retired) rank of commander.	President general court-martial	
J. F. Hanscom	Naval constructor (retired), rank of rear-admiral.	President, board on changes, Philadelphia, Pa	
J. H. Linnard	Naval constructor, rank of captain.	Superintending construction, Cramp & Sons, New York Shipbuilding Co., Camden, N. J.	

NAVY YARD, WASHINGTON, D. C.

E. H. C. Leutze	Rear-admiral	Commandant and superintendent, Naval Gun Factory	
E. F. Qualtrough	Captain	Inspection board	Recorder of labor board; head of departments of equipment and navigation; senior member wages board.
Alexander Sharp	Commander	Assistant superintendent, Naval Gun Factory	Acting captain of yard; head departments yards and docks and steam engineering; senior member labor board; member wages board.
J. J. Knapp	do.	Member general court-martial	

H. P. Jones	Lieutenant-commander	Inspector of ordnance	Member board on wages; general supervision all gun factory shops and machinery, etc.
G. H. Burrage	do	Commanding seamen's quarters	Member general court-martial; member board of sales and pension board; supervises instruction, seamen's gunners class.
U. T. Holmes	do	Ordnance department	In charge drafting room.
A. L. Willard	do	do	Member labor board.[a]
W. P. Scott	do	do	
A. M. Procter	do	do	Member inspection board.[a]
W. M. Falconer	Lieutenant	do	Member general court-martial.[a]
C. Shackford	do	do	Aid at White House.
J. R. Defrees	do	do	Surveying officer.
P. W. Foote	do	do	Member labor board.[a]
F. J. Cleary	Ensign	do	Inspector at Firth-Sterling Works; member pension board.[a]
Thos. Streets	Medical director, rank of captain.	Commanding naval hospital	
J. C. Boyd	do	Commanding naval medical school hospital	
H. T. Percy	Surgeon, rank of lieutenant-commander.	Medical officer of yard	
S. G. Evans	do	Attached to naval hospital	
H. C. Curl	do	Attached to naval medical school hospital	
H. W. Smith	Passed assistant surgeon, rank of lieutenant.	do	
A. B. Clifford	do	do	
F. E. Porter	Assistant surgeon, rank of lieutenant (junior grade).	Navy-yard dispensary	Member pension board.
S. Bacon	Acting assistant surgeon, rank of lieutenant (junior grade).	Attached to naval hospital	
L. W. McGuire	do	do	
J. N. Speel	Pay director, rank of captain.	Purchasing pay officer	
J. R. Martin	do	General storekeeper	
G. W. Simpson	Pay inspector, rank of commander.	Navy pay office	
S. L. Heap	do	Paymaster of yard	Senior member board of sale.
C. R. O'Leary	Paymaster, rank of lieutenant.	Navy pay office	
D. G. McRitchie	Past assistant paymaster, rank of lieutenant.	Assistant general storekeeper	
J. H. Gunnell	Assistant paymaster, rank of ensign.	Pay officer, seaman's quarters	Judge-advocate, general court-martial.
G. L. Bayard	Chaplain, rank of lieutenant	Chaplain of station	

[a] Inspector of guns, mounts, and ordnance material during process of manufacture.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVY YARD, WASHINGTON, D. C.—Continued.

Naval proving ground, Indian Head, Md.

Name.	Rank.	Paramount duty.	Additional duty, etc.
Jos. Strauss	Lieutenant-commander	Inspector of ordnance in charge of naval proving ground and powder factory.	Member of special board on naval ordnance and joint army and navy board on powder.
D. B. Theleen	Lieutenant	Senior assistant, in charge of power, machinery, buildings, and care of grounds.	Member of labor board.
C. H. Woodward	do	Assistant; mathematical work; superintendent of magazines and special experimental work; records.	Member of labor board; member of inspection board.
Roger Williams	do	Assistant; proof officer	Member of labor board.
E. P. Huff	Assistant surgeon, rank of lieutenant (junior grade).	Medical officer	Member of inspection board.

UNITED STATES NAVAL ACADEMY, ANNAPOLIS, MD.

Superintendent.			
Chas. J. Badger	Captain	Superintendent	
Personal staff.			
L. R. Sargent	Lieutenant	Aid to superintendent and secretary academic board	
O. G. Dodge	Professor of mathematics, rank of commander.	Assistant to superintendent, in charge buildings and grounds	
General staff.			
A. P. Niblack	Commander	Commanding officer U. S. S. Hartford	
F. S. Nash	Surgeon, rank of lieutenant-commander.	Senior medical officer	
A. M. D. McCormick	do	Medical officer	
F. C. Cook	do	Medical officer, physical training	
F. M. Blackwell	Passed assistant surgeon, rank of lieutenant.	Medical officer	
R. E. Riggs	do	do	
T. J. Cowle	Pay inspector, rank of commander.	Pay officer and general storekeeper	
R. H. Woods	Paymaster, rank of lieutenant.	Commissary and storekeeper	

Department of discipline.			
W. S. Benson	Commander	Commandant of midshipmen	
T. G. Dewey	Commander (retired)	Senior assistant to commandant of midshipmen	
R. L. Beach	Lieutenant-commander	Assistant to commandant of midshipmen	
J. H. Dayton	do	do	
D. E. Dismukes	do	do	
N. E. Irwin	do	do	
Arthur MacArthur, jr	Lieutenant	do	
Department of seamanship.			
C. B. Brittain	Lieutenant-commander	Head of department	
H. G. Gates	do	Instructor	
H. J. Ziegemeier	do	do	
Yates Stirling, jr	do	do	
W. J. Manion	Lieutenant	do	
J. D. Wainwright	do	do	
R. S. Keyes	do	do	
Department of ordnance and gunnery.			
J. A. Hoogewerff	Commander	Head of department	
H. K. Hines	Lieutenant-commander	Instructor	
M. E. Trench	do	do	
F. E. Ridgely	Lieutenant	do	
H. Williams	do	do	
W. M. Hunt	do	do	
Paul Foley	do	do	U. S. S. Bagley.
E. J. King	do	do	
A. P. Fairfield	do	do	
W. N. Vernon	do	do	
Department of navigation.			
W. C. P. Muir	Commander (retired)	Head of department	
W. V. Pratt	Lieutenant-commander	Instructor	
J. F. Hines	do	do	
W. H. Faust	Lieutenant (retired)	do	
W. C. Asserson	Lieutenant	do	
C. S. Kempff	do	do	
Y. S. Williams	do	do	
S. W. Bryant	do	do	
H. C. Cocke	do	do	
M. G. Cook	do	do	
B. B. Wygant	do	do	

NEX B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1909*—Continued.

NAVY YARDS AND STATIONS—Continued.

UNITED STATES NAVAL ACADEMY, ANNAPOLIS, MD.—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
Department of marine engineering and naval construction.			
F. W. Bartlett	Commander	Head of department	
G. W. Laws	Lieutenant-commander	Instructor	
J. P. J. Ryan	do	do	
R. C. Moody	do	do	
L. F. James	do	do	
F. D. Karns	Lieutenant	do	
O. G. Murfin	do	do	
A. T. Graham	do	do	
F. L. Pinney	do	do	
A. E. Watson	do	do	
W. S. Pye	do	do	
O. W. Fowler	do	do	
J. F. Green	do	do	
O. H. Oakley	do	do	
F. S. Whitten	do	do	
Department of mathematics and mechanics.			
S. J. Brown	Professor, rank of captain	Head of department	
H. M. Paul	Professor, rank of commander.	Instructor	
H. E. Smith	Professor, rank of lieutenant.	do	
D. M. Garrison	do	do	
C. T. Owens	Lieutenant	do	
W. S. Harahman	Professor, rank of lieutenant.	do	
A. W. Johnson	Lieutenant	do	
H. L. Rice	Professor, rank of lieutenant	do	
Department of electrical engineering and physics.			
W. H. G. Bullard	Lieutenant-commander	Head of department of electrical engineering	
E. T. Pollock	do	Instructor	
H. H. Christy	do	do	

C. F. Preston	do	do	
J. M. Reeves	do	do	
Amon Bronson, jr	Lieutenant	Instructor and board of inspection	
W. D. Leahy	do	Instructor	
B. C. Allen	do	do	
W. Brown, jr	do	do	
E. P. Finney	do	do	
P. J. Dashiell	Professor, rank of lieutenant.	do	
Department of English.			
G. R. Clark	Commander	Head of department	
Department of modern languages.			
H. F. Bryan	Lieutenant-commander	do	
Branch of hygeine and physical training.			
F. C. Cook	Surgeon, rank of lieutenant-commander.	Director of physical training	
Chaplain.			
H. H. Clark	Chaplain, rank of captain	Duties of a chaplain	

NAVY YARD AND STATION, NORFOLK, VA.

E. D. Taussig	Captain	Commandant; also commandant fifth naval district	
D. M. Wood	Lieutenant	Aid to commandant	Member general court-martial.
R. R. Hoes	Chaplain; rank of captain	Chaplain	
D. D. V. Stuart	Captain	Captain of yard	Senior member labor board.
A. C. Cunningham	Civil engineer, rank of lieutenant.	Head department of yards and docks	
L. M. Cox	do	Assistant	
C. D. Thurber	Assistant civil engineer, rank of lieutenant (junior grade).	do	Member board of inspection.
C. Laird (retired)	Captain	Equipment officer	Senior member board on wages.
I. K. Seymour	Lieutenant-commander	Ordnance officer	Member board on wages.
A. Mertz	Captain	Inspector of ordnance, St. Julien's Magazine	
R. M. Watt	Naval constructor, rank of lieutenant-commander.	Head department of construction and repair	Do.
L. S. Adams	do	Assistant	Member of labor board.
R. P. Schlabach	Assistant naval constructor, rank of lieutenant (junior grade).	do	
D. R. Battles	do	do	Member board of inspection.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVY YARD AND STATION, NORFOLK, VA.—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
A. B. Willits	Commander	Head department of steam engineering	Member board on wages.
H. G Leopold (retired)	do	Assistant	Member of labor board.
K. McAlpine	Lieutenant-commander	do	Member board of inspection; briquet test.
F. H. Brumby	Lieutenant	do	Machinists' school; briquet test.
S. H. Dickson	Medical inspector, rank of commander.	Surgeon of yard	
R. E. Ledbetter	Passed assistant surgeon, rank of lieutenant.	Assistant	
P. A. Lovering	Medical inspector, rank of commander.	In command U. S. Naval Hospital	
R. C. Holcomb	Surgeon, rank of Lieutenant-commander.	Assistant	
H. A. May	Passed assistant surgeon, rank of lieutenant.	do	
W. A. Angwin	do	do	
H. E. Biscoe	Paymaster, rank of lieutenant-commander.	General storekeeper	
C. Morris, jr	Paymaster, rank of lieutenant.	Assistant	
C. J. Cleborne	do	do	
W. D. Sharp	Assistant paymaster, rank of lieutenant (junior grade).	do	Surveying officer.
H. H. Balthis	Paymaster, rank of lieutenant.	Paymaster of the yard and station	
H. Minett	Captain (retired)	Senior member board of inspection	
Navy pay office, Norfolk, Va.			
W. W. Galt	Pay director, rank of captain.	Charge of the navy pay office	
General court-martial duty at yard.			
J. G. Quinby	Commander	President	
C. P. Shaw	Lieutenant-commander (retired).	Member	

Commanding Reserve Torpedo Flotilla, Norfolk, Va.			
L. C. Richardson	Lieutenant	Commanding flotilla	
J. W. Hayward	Ensign	Duty, connection with flotilla	
E. H. Tricou	Passed assistant paymaster, rank of lieutenant.	Pay officer of flotilla	

UNITED STATES NAVAL TRAINING STATION, SAN FRANCISCO, CAL.

E. E. Capeheart	Commander	Commandant	Commanding Pensacola.
C. C. Fewel	Lieutenant-commander	Captain of the yard	
C. B. Barnes	Lieutenant	Executive officer	
T. R. Kurtz	do	Supervisor of drills	
J. G. Field	Surgeon, rank of lieutenant-commander.	Senior medical officer of station	
F. G. Abeken	Passed assistant surgeon, rank of lieutenant.	Assistant	
D. C. Cather	Assistant surgeon, rank of lieutenant (junior grade).	do	
G. A. Helmicks	Assistant paymaster, rank of lieutenant (junior grade).	General storekeeper and pay officer of station	
B. R. Patrick	Chaplain, rank of lieutenant-commander.	Chaplain of station	

NAVY YARD, MARE ISLAND, CAL.

T. S. Phelps, jr	Captain	Commandant	
J. B. Milton	do	Captain of the yard	
Lucien Young	do	President general court-martial and senior officer of naval examining and retiring boards.	
E. B. Underwood	do	Inspector of ordnance	Member naval examining and retiring boards.
A. W. Dodd	Captain (retired)	Inspector of ordnance, magazine, and aid to commandant	Member examining and retiring boards.
C. A. Carr	Commander	In charge department of steam engineering	
S. L. Graham	Lieutenant (retired)	Assistant to equipment officer	Recorder of board of labor employment; senior member board of inspection; senior member board of sale; recorder of naval examining and retiring boards; member of general court-martial.
D. S. Mahoney	Lieutenant	Assistant to head of steam engineering department	
J. D. Parker	do	Assistant to equipment officer and inspector of wireless telegraph stations on the Pacific coast.	
W. Bertholf	do	Commanding torpedo flotilla in reserve	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVY YARD, MARE ISLAND, CAL.—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
R. C. Persons	Medical director, rank of captain.	Officer in command U. S. naval hospital	President naval medical and medical examining boards.
F. Anderson	Medical inspector, rank of commander.	Commanding naval medical supply depot	Member naval medical, and medical examining boards, and member naval retiring board.
H. E. Odell	Surgeon, rank of lieutenant-commander.	Naval hospital	Member naval retiring, naval medical examining, and medical examining boards.
C. N. Fisk	Passed assistant surgeon, rank of lieutenant.	do	
G. W. Shephard	Assistant surgeon, rank of lieutenant (junior grade).	do	
C. M. Ray	Pay director, rank of captain.	General storekeeper	
Z. W. Reynolds	Pay inspector, rank of commander.	Puchasing pay officer, San Francisco	
W. A. Greer	Paymaster, rank of lieutenant.	Assistant to general storekeeper	
W. T. Wallace	do	Paymaster of the yard	
J. F. Hatch	do	Assistant to general storekeeper	
R. Nicholson	do	do	
P. J. Willett	Passed assistant paymaster, rank of lieutenant.	do	
E. A. McMillan	Passed assistant paymaster.	do	
J. F. Kutz	do	In charge of accounts of yard tugs, torpedo flotilla, etc	
H. A. Evans	Naval constructor, rank of lieutenant-commander.	In charge department of construction and repair	
H. T. Wright	Assistant naval constructor, rank of lieutenant.	Assistant to constructor of yard	
S. M. Henry	Assistant naval constructor, rank of lieutenant (junior grade).	do	
R. D. Gatewood	Assistant naval constructor.	do	
C. W. Fisher	do	do	
T. J. J. See	Professor of mathematics, rank of commander.	In charge of naval observatory	Member general court-martial.
A. A. McAllister	Chaplain (retired), rank of captain.	Chaplain	
J. V. Rockwell	Civil engineer, rank of lieutenant.	In charge of department of yards and docks	

NAVY YARD, PUGET SOUND, WASHINGTON.

W. T. Burwell	Rear-admiral	Commandant	
D. H. Mahan	Captain	Captain of the yard	Senior member of naval board; senior member board of wages.
Yards and docks department.			
A. C. Lewerenz	Civil engineer, rank of lieutenant.	Head of department	Representative member of board of inspection; member board on wages.
P. L. Reed	do	Assistant to head of department	
C. A. Bostrom	Assistant civil engineer, rank of lieutenant (junior grade).	do	Member naval examining board, Navy-yard order No. 779; member various boards of inventory and survey.
Equipment department.			
C. H. Hayes	Lieutenant-commander	Head of department	Senior member board of inspection; member board on wages.
Z. E. Briggs	Lieutenant	Assistant to equipment officer	Member general court-martial; recorder board of labor employment; surveying officer.
Construction and repair department.			
J. D. Benret	Naval constructor, rank of lieutenant-commander.	Head of department	Senior member board on changes, U. S. S. Prometheus; member board on changes, U. S. S. Nebraska.
C. M. Simmers	Assistant naval constructor, rank of lieutenant.	Senior assistant to head of department in direct charge of work, U. S. S. Wisconsin, and of plant work.	Member board of labor employment.
J. H. Walsh	do	Assistant to head of department: in charge of purchase and inspection of supplies; in direct charge of building coal barges; conversion account work.	Member board of inspection; member general court-martial.
Steam engineering.			
Stacy Potts	Commander	Head of department	Member board of labor employment; representative member board of inspection; surveying officer.
Medicine and surgery.			
J. B. Dennis	Surgeon, rank of lieutenant-commander.	Medical officer in command of naval hospital, and yard surgeon	
Supplies and accounts.			
Jonathan Brooks	Paymaster, rank of lieutenant.	General storekeeper	Representative member board of inspection.
H. R. Insley	do	Yard paymaster	Member of various boards of inventory, survey, and appraisal.

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVY YARD, PUGET SOUND, WASHINGTON—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
Ordnance department.			
G. R. Slocum	Lieutenant-commander	Inspector of ordnance	Representative member board of inspection.
Z. E. Briggs	Lieutenant	Assistant to inspector of ordnance	Member general court-martial; recorder board of labor employment; surveying officer.
Navy pay office, Seattle, Wash.			
Robert H. Orr	Paymaster, rank of lieutenant.	In charge navy pay office	

NAVAL TRAINING STATION, GREAT LAKES, NORTH CHICAGO, ILL.

A. Ross	Rear-admiral (retired)	Commandant	
W. V. H. Rose	Paymaster, rank of lieutenant.	Paymaster of station	
G. A. McKay	Civil engineer, rank of lieutenant.	Duty at station	

NAVAL STATIONS, CHARLESTON AND PORT ROYAL, S. C.

G. L. Dyer	Captain	Commandant; also commandant sixth naval district	
H. W. Cole	Assistant surgeon, rank of lieutenant (junior grade).	Surgeon of the yard	
J. S. Phillips	Pay inspector, rank of commander.	General storekeeper	
J. A. Furer	Assistant naval constructor, rank of lieutenant.	Head department of construction and repair	
W. H. Allen	Civil engineer, rank of lieutenant.	Head department of yards and docks	
R. N. Warfield	Assistant civil engineer, rank of lieutenant (junior grade).	Assistant to head department of yards and docks	

NAVAL STATION, KEY WEST, FLA.

W. H. Beehler	Commodore (retired)	Commandant; also commandant seventh naval district	
G. R. Plummer	Acting assistant surgeon, rank of lieutenant (junior grade).	Surgeon of the yard	
R. B. Lupton	Assistant paymaster, rank of lieutenant (junior grade).	General storekeeper	
De W. C. Webb	Civil Engineer, rank of lieutenant.	Head department of yards and docks	

NAVAL STATION, NEW ORLEANS, LA.

F. Singer	Rear-admiral (retired)	Commandant	
R. E. Carney	Assistant engineer (retired), rank of lieutenant (junior grade).	Head department of steam engineering	
N. T. McLean	Passed assistant surgeon, rank of lieutenant.	Surgeon of yard	
S. L. Bethea	Assistant paymaster, rank of ensign.	General storekeeper	
J. W. Woodruff	Assistant naval constructor, rank of lieutenant.	Head department of construction and repair	
E. R. Gayler	Civil engineer, rank of lieutenant.	Head department of yards and docks	

NAVY-YARD AND STATION, PENSACOLA, FLA.

L. C. Heilner	Captain	Commandant; also commandant eighth naval district	
F. M. Bennett	Commander	Captain of the yard	Equipment and ordnance officer.
A. J. Menocal	Civil engineer	In charge department of yards and docks	
R. H. Osborn	Lieutenant	Assistant equipment and ordnance officer	
J. E. Bailey	Assistant naval constructor, rank of lieutenant.	In charge department of construction and repair	
T F. Carter	Commander	In charge department of steam engineering	
G. P Lumsden	Medical inspector, rank of commander.	Surgeon of the yard and in charge naval hospital	
R. A. Warner	Assistant surgeon, rank of lieutenant (junior grade).	Assistant, naval hospital	
J. A. Bull	Passed assistant paymaster, rank of lieutenant.	General storekeeper	
F. H. Lemly	do	Paymaster, yard and station	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

LIGHT-HOUSE ESTABLISHMENT (UNDER DEPARTMENT OF COMMERCE AND LABOR).

Name.	Rank.	Paramount duty.	Additional duty, etc.
Light-House Board.			
Adolph Marix	Captain	Chairman	
Samuel P. Comly	do	Member	
James M. Helm	Commander	Naval secretary	
Light-house inspectors.			
John D. McDonald	Lieutenant-commander	First district	
Clifford J. Boush	Commander	Second district	
John A. Rodgers	Captain	Third district	
Albert N. Wood	do	Assistant, third district, in charge Porto Rico light-house service	
J. R. Y. Blakely	Lieutenant-commander	Assistant, third district	
John E. Craven	Commander	Fourth district	
Edward Lloyd, jr	do	Fifth district	
Hugh Rodman	do	Sixth district	
Benjamin Tappan	do	Seventh district	
Guy W. Brown	do	Eighth district	
John M. Orchard	do	Ninth district	
Frank M. Bostwick	do	Tenth district	
James F. Smith	do	Eleventh district	
Robert F. Lopez	do	Twelfth district	
James F. Carter	Lieutenant-commander	Assistant, twelfth district (Hawaii)	
Percival J. Werlich	Commander	Thirteenth district	
Clarence M. Stone	Lieutenant-commander	Fourteenth district	
Louis S. Van Duzer	Commander	Fifteenth district	
Edwin H. Tillman	do	Sixteenth district	

NAVAL RECRUITING STATIONS.

Herbert O. Dunn	Commander	In charge, Baltimore, Md	
E. H. Marsteller	Surgeon, rank of lieutenant-commander.	Baltimore, Md	
Herbert Winslow	Captain	In charge, Boston	
John W. Baker	Surgeon (retired), rank of lieutenant.	Boston	Marine recruiting station.
Homer L. Law	do	do	

Oscar W. Koester	Lieutenant-commander	In charge, Buffalo	
Clarence F. Ely	Passed assistant surgeon, rank of lieutenant.	Buffalo	
J. S. Doddridge	Lieutenant-commander	In charge, Chicago	
R. W. Plummer	Passed assistant surgeon, rank of lieutenant.	Chicago	
Ernest A. Brooks	Lieutenant	In charge, Chattanooga	
A. C. H. Russell	Surgeon, rank of commander.	Chattanooga	
Edwin A. Anderson	Lieutenant-commander	In charge, Cincinnati	
J. S. Woodward	Passed assistant surgeon, rank of lieutenant.	Cincinnati	
Wm. P. White	Commander	In charge, Cleveland	
James H. Payne, jr	Passed assistant surgeon, rank of lieutenant.	Cleveland	
D. V. H. Allen	Lieutenant-commander	In charge, Denver	
James A. Randall	Passed assistant surgeon, rank of lieutenant.	Denver	
Percy N. Olmsted	Lieutenant-commander	In charge, Des Moines	
Amos McK. Jones	Acting assistant surgeon, rank of lieutenant (junior grade).	Des Moines	
G. L. P. Stone	Lieutenant	In charge, Detroit	
Allen D. McLean	Passed ass stant surgeon, rank of lieutenant.	Detroit	
Alfred W. Pressey	Lieutenant	In charge, Indianapolis	
Henry B. Fitts	Surgeon, rank of lieutenant-commander.	Indianapolis	
Irwin F. Landis	Lieutenant	In charge, Kansas City, Mo	
Paul A Dessey	Assistant surgeon, rank of lieutenant (junior grade).	Kansas City	
Jesse B. Gay	Lieutenant	In charge, Minneapolis	
Fred M. Bogan	Passed assistant surgeon, rank of lieutenant.	Minneapolis	
Bradley A. Fiske	Captain	In charge, New York	
Howard Wells	Medical director, rank of captain.	New York	
Oliver D. Norton	Surgeon, rank of lieutenant-commander.	do	Also marine recruiting station.
Ivan E. Bass	Lieutenant	In charge, New Orleans	
Wm. J. Zalesky	Passed assistant surgeon, rank of lieutenant.	New Orleans	
Wm. W. Bush	Lieutenant-commander	In charge, Oklahoma City	
Harry L. Brown	Passed assistant surgeon with rank of lieutenant.	Oklahoma City	
George F. Neal	Lieutenant	In charge, Omaha	
Geo. L. Wickes	Assistant surgeon, rank of lieutenant (junior grade).	Omaha	
Wm. W. Gilmer	Lieutenant-commander	In charge, Philadelphia	
D. N. Bertolette	Medical director, rank of captain.	Philadelphia	
Gilbert Chase	Lieutenant	In charge, Pittsburg	

EXHIBIT B.—*List of line and staff officers on duty at the various navy yards and stations in the United States January 1, 1908*—Continued.

NAVY YARDS AND STATIONS—Continued.

NAVAL RECRUITING STATIONS—Continued.

Name.	Rank.	Paramount duty.	Additional duty, etc.
Robert E. Stoops	Assistant surgeon, rank of lieutenant (junior grade).	Pittsburg	
Ezra J. Derr	Medical director, rank of captain.	Providence, R. I	
Wm. R. White	Lieutenant	In charge, St. Louis	
Ralph T. Orvis	Surgeon, rank of lieutenant-commander.	St. Louis	
Wilbert Smith	Lieutenant	Itinerant recruiting party, No. 3	
John F. Kennedy	Surgeon, rank of lieutenant-commander.	do	

ON DETACHED DUTY.

H. G. Sparrow	Lieutenant	Marine superintendent, bureau of navigation, Philippine Islands [a]	
P. E. Garrison	Assistant-surgeon, rank of lieutenant (junior grade).	Medical zoologist, bureau of science, Manila, Philippine Islands [a]	
E. S. Stalnaker	Passed assistant paymaster, rank of lieutenant.	Special duty, connection analysis of food products [b]	
B. P. DuBois	Paymaster, rank of lieutenant-commander.	Special duty, Philadelphia Textile School, Philadelphia, Pa	
H. H. Rousseau	Civil engineer, rank of lieutenant.	Member Isthmian Canal Commission	
J. F. Leys	Surgeon, rank of lieutenant-commander.	Duty under department of government and sanitation, Canal Zone, Isthmus of Panama.	
F. M. Shook	Assistant surgeon, rank of lieutenant (junior grade).	Duty under department of government and sanitation, Colon Hospital, Cristobal, Canal Zone.	
C. C. Grieve	Passed assistant surgeon, rank of lieutenant.	In command U. S. naval hospital, Sitka, Alaska	
M. C. Baker	Assistant surgeon, rank of lieutenant (junior grade).	Duty, Midway Islands	
E. B. Barry	Captain	Supervisor naval auxiliaries, headquarters, New York, N. Y	
DeW. C. Redgrave	Commander (retired)	Assistant	
G. A. Converse	Rear-Admiral (retired)	President of Board on Construction	

UNDER INSTRUCTION AT RENSSELAER POLYTECHNIC INSTITUTE, TROY, N. Y.

S. Gordon	Assistant civil engineer, rank of lieutenant, junior grade.	Instruction	
P. J. Bean	do	do	
A. A. Baker	do	do	
R. F. Smith	do	do	
N. M. Smith	do	do	
R. S. Furber	do	do	

ON DUTY UNITED STATES NAVAL HOSPITAL, NEW FORT LYON, COLO.

C. T. Hibbett	Medical inspector, rank of commander.	In command	
W. H. Bucher	Surgeon, rank of lieutenant commander.	Duty	
D. L. Wright	do	do	
E. M. Brown	Passed assistant surgeon, rank of lieutenant.	do	
E. C. Taylor	do	do	
F. G. Pyne	Paymaster, rank of lieutenant.	General storekeeper	

ON DUTY WITH MARINES IN CUBA.

F. L. Benton	Surgeon, rank of lieutenant commander.	Duty	
H. O. Shiffert	Passed assistant surgeon, rank of lieutenant.	do	
J. H. Iden	do	do	
J. H. Holloway	do	do	
R. E. Riggs	do	do	
J. L. Taylor	Assistant surgeon, rank of lieutenant, junior grade.	do	
J. B. Mears	do	do	
E. C. White	do	do	
A. H. Robnett	do	do	

[a] This duty under War Department.

[b] This duty under Department of Agriculture.

EXHIBIT C.

Synopsis of Exhibits A and B.]

MEMORANDUM.

July 1, 1905.		*January 1, 1908.*	
Line officers only	1,109	Line officers only	1,279
Formerly engineers, for shore duty only	22	Formerly engineers, for shore duty only	35
Line officers, for sea duty	1,087	Line officers for sea duty	1,244
Medical	243	Medical	299
Pay	163	Pay	198
Professor of mathematics	13	Professor of mathematics	14
Chaplains	24	Chaplains	24
Naval constructors	55	Naval constructors	62
Civil engineers	32	Civil engineers	41
Staff officers	530	Staff officers	638
		Staff increase, January 1, 1908	105
		Line increase, January 1, 1908	170
Total line	1,109	Total line	1,279
Total staff	530	Total staff	638
	1,639		1,917
Line afloat	749	Line afloat	914
Staff afloat	262	Staff afloat	234
	1,011		1,148
Percentage of line afloat	68.9	Percentage of line afloat	73.4
Percentage of staff afloat	49.1	Percentage of staff afloat	36.6
On duty in Washington:		On duty in Washington:	
Line, active	103	Line, active	82
Line, retired	14	Line, retired	14
	117		96
Staff, active	61	Staff, active	75
Staff, retired	4	Staff, retired	3
	65		78
		Assistant surgeons under instruction	35
			113

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60TH CONGRESS, 1st Session. | SENATE. | Doc. 233, Part 2.

SUPPLEMENTAL LIST OF OFFICERS OF NAVY ON DUTY IN WASHINGTON, JANUARY 1, 1908.

LETTER

FROM

THE SECRETARY OF THE NAVY,

TRANSMITTING,

IN RESPONSE TO SENATE RESOLUTIONS OF JANUARY 21, 1908, A SUPPLEMENTAL LIST OF OFFICERS ON DUTY WITH THE GENERAL BOARD, BOARD ON CONSTRUCTION, AND JOINT ARMY AND NAVY BOARD, WHICH WAS OMITTED FROM THE DEPARTMENT'S LETTER OF THE 6TH INSTANT.

FEBRUARY 22, 1908.—Referred to the Committee on Naval Affairs and ordered to be printed.

NAVY DEPARTMENT,
Washington, February 21, 1908.

SIR: Referring to the Department's letter of the 6th instant, transmitting, in accordance with the direction of the President, information concerning officers of the Navy on shore duty, called for by Senate resolutions of January 21, 1908, I have the honor to forward herewith list of officers on duty with the General Board, Board on Construction, and Joint Army and Navy Board, which was omitted from papers inclosed with my previous letter.

Very respectfully,

V. H. METCALF,
Secretary.

The PRESIDENT OF THE SENATE.

GENERAL BOARD.

Name.	Rank.	Paramount duty.	Additional duty.
G. Dewey	Admiral	President	Member Army and Navy Board.
C. McR. Winslow	Commander	Assistant, superintendent of navigation.	Member.
J. P. Merrell	Rear-admiral	President, War College	Do.
R. P. Rodgers	Captain	Chief intelligence officer	Do.
F. F. Fletcher	Commander	Duty connection	Member special ordnance board.
S. S. Wood	do	do	Aids to Admiral of Navy.
C. R. Williams	Lieutenant-commander	do	
F. K. Hill	do	do	
G. W. Logan	do	Secretary	

BOARD ON CONSTRUCTION.

G. A. Converse	Rear-admiral, retired	President	
W. S. Cowles	Rear-admiral	Chief, Bureau of Equipment	Member.
N. E. Mason	do	Chief, Bureau of Ordnance	Do.
W. L. Capps	Chief constructor (rank of rear-admiral).	Chief, Bureau of Construction and Repair.	Do.
C. W. Rae	Rear-admiral	Chief, Bureau of Steam Engineering.	Do.

JOINT ARMY AND NAVY BOARD.

G. Dewey	Admiral	President, General Board	Member Army and Navy Joint Board.
J. P. Merrell	Rear-admiral	President, War College	Do.
J. E. Pillsbury	do	Chief, Bureau of Navigation	Do.
W. J. Barnette	Captain	Superintendent, Naval Observatory.	Do.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 234.

CONDITIONS AT UNITED STATES JAIL AND WORKHOUSE, WASHINGTON, D. C.

Mr. GALLINGER presented the following

STATEMENTS CONCERNING THE PRESENT CONDITIONS AT THE UNITED STATES JAIL AND THE WORKHOUSE.

FEBRUARY 10, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

FEBRUARY 5, 1908.

To the East Washington Citizens' Association:

SIRS: Your committee, in order to acquaint itself with present conditions at the jail and workhouse, made a recent visit to both places, and to both Warden Harris and Superintendent Zinkham acknowledgment is due for official and personal courtesies.

The writer had frequently visited both places in the years between 1885 and 1902. This was his first visit since the latter year.

The jail was found in its usual overcrowded condition. When first built provision was made for a population of 300 inmates, each to be assigned a single cell 7 feet wide, about 8 feet long, with a single bed. The warden is now compelled to arrange for two prisoners in each of a large majority of these single cells, none of these having modern closet and other conveniences. Because of the invention of these facilities and conveniences since the present jail was erected, it is impossible to introduce them in the present structure, unless the whole interior be torn out, and this at a cost almost equal to that of an entirely new building.

Our association has persistently for many years pleaded with and urged the governing powers of the District to remove this old-fashioned and badly designed jail and relocate it on a new site—close to one of the railroad lines, where a new and comparatively inexpensive structure could be erected in a walled inclosure—into which a switch from the railroad track could be run. Thus located, the prisoners could be put to work cutting stone and other tasks of benefit to the District as well as to the General Government—thus avoiding the antagonism of labor unions, aiding in paying for their own maintenance, and, above all, giving to every man an opportunity to find in congenial labor opportunity to escape recollections of a regrettable past, and to many new skill and power to enable them to earn an honest living after the term of detention has expired. Until thus removed and relocated these needs of our jail can never be met. Our

association must not yield to discouragement at the apparent fruitlessness of its twenty years of labor to this end. Fresh courage can be taken because of the recent conversion of Warden Harris to our view that only by removal can needed modern conditions as above stated be met. In his last annual report to the Attorney-General he embodied this recommendation, together with a recommendation that in addition to new buildings, remote from the heart of the city, there be erected a small building near to or adjoining the present courthouse on Judiciary square, where prisoners pending their trial can be confined. This will facilitate the work of the courts and save expense and in many cases valuable time.

In this connection your committee calls attention to the views of Mr. Justice Stafford of the supreme court of the District:

> We have a jail, intended for 300, where almost twice that number are confined, two or three crowded in a cell, the accused and the convicted treated alike; no modern plumbing; the calls of nature answered in the cell; and out of twenty-four hours of idleness and sloth thirty minutes of exercise. * * * For all of those graver offenses which the statutes declare shall be punished in the penitentiary we have no institution in the District. Sentence is imposed and the convict goes where the Department of Justice sends him, to some State penitentiary with which it may have a contract.

Upon the needless loss to the District of this practice of confining District prisoners in distant prisons your committee will not dwell. A committee of the chamber of commerce has figured out that large sums could be saved as well as all desired benefits secured to every prisoner were the plan of Warden Harris, so long advocated by this association, adopted.

WORKHOUSE.

In the matter of the workhouse buildings your committee found little if any improvement of conditions there, which, if stated at length, would make glad the heart of any citizen of the national capital. No broad-gauged plan for the relocation of all these buildings on new and better sites has ever been studied out by any board of charities or any other organization whose plain duty it was to do so. For decorative purposes plans involving purchase in the central portion of the city of nearly half a hundred squares and improvements thereon at a cost of over two hundred millions can excite the oratorial powers of many, but these powers seem to become mute whenever the long-existing blight upon the eastern section of the city is presented for consideration. The wise expenditure of less than $1,000,000 will more than cover the cost of removing to and relocating on better sites the present workhouse structures, the buildings long used for almshouse patients, the new crematory, and the smallpox hospital. On new sites suitable to the need of each less expensive structures can be erected, and when this is done the ground now occupied by them can be sold, and the proceeds therefrom more than cover all that has been expended.

To the worldly wise legislator this important phase of cost and return will appeal. To those who look further ahead than to-morrow's breakfast your committee beg to quote again from Mr. Justice Stafford:

> We hold that the true test of greatness in men is the attitude they take ward their inferiors. The real hero on the ladder of life is always reaching p with one hand for the round above him, but with the other he is always

reaching down to help the man below him. So a nation must be judged by the way it treats its helpless and its criminals. The State is the mother of all her children. She must deal with them as such. The prosperous and powerful have drawn their strength from her bosom. The skilled and cultivated were trained and taught at her knees. The ignorant are those whom she has failed to call around her. The poor may be those whom her imperfect or partial laws have kept in poverty. Her very criminals are too often those who have taken their vicious taint from her own blood. You do not judge a father by what he does for his gifted and promising son. But how does he treat the son who has gone astray, the son who is imbecile, or crippled, or depraved? So do we judge times and peoples.

Very truly,

SAMUEL W. CURRIDEN,
Chairman Charities and Corrections Committee,
East Washington Citizens' Association.

[From The Evening Star of December 7, 1907.]

Should employ prisoners—Recommendation by warden of United States jail—Urges establishment of a reformatory—Report covering affairs during the past year.

An interesting recommendation has been made to the Attorney-General by James H. Harris, warden of the United States jail, this city, in his annual report. In addition to telling of the affairs at the jail during the year ended October 31 last and submitting estimates for next year, the warden recommended a new establishment, to be called a prison reformatory, and also suggested that all District prisoners be employed.

"In my reports for several years past," the warden says, "I have referred to the inadequacy of the jail as it is to accommodate the number of prisoners that we have continually had in the jail, and I have strongly recommended that the present structure be remodeled by having modern plumbing and other conveniences added thereto, and to have quite extensive additions built to the jail in order that the number of prisoners we have, and are likely to continue to have, could be properly taken care of.

"I wish to say, however, that my mind has undergone quite a change in reference to what the Government should do about this whole matter. I now desire to recommend that the Government should found and maintain within the District of Columbia, or near by in the State of Maryland, provided suitable grounds can not be obtained in the District of Columbia, an institution, to be called a prison reformatory, of such capacity as would be required to take care of all sentenced prisoners of the District of Columbia, as well as all United States prisoners for the District of Columbia; that a sufficient amount of land should be procured suitable for farming, gardening, and other purposes as might be required for such an institution; that all prisoners of short sentence should be made to work on the farm in the production of whatever could be best used for the maintenance of the institution, and that all other prisoners should be employed in the production of articles of value, the proceeds from the sale thereof to be covered into the United States Treasury, and as much thereof as would be required to defray the expenses of the institution be appropriated by Congress for that purpose.

"CHARACTER OF INDUSTRIES.

"I know the question will arise as to what industries could be carried on which would not be considered injurious to labor in a general way. To my mind it is sheer nonsense to say that people who have been convicted of crime shall not work because it would be injurious to what is called honest labor. The only objection to the production of manufactured goods of prison labor is where the sale of such production would come in competition with goods manufactured by ordinary labor.

"I therefore suggest that the War Department could give orders to this institution for the manufacture of army supplies, such as saddles, harness,

blankets, and clothing, at such prices as the War Department would pay other manufacturing institutions for the same kind of manufactured goods, and in doing so the institution would be entirely self-supporting.

"The present jail would then be used only for the detention of prisoners awaiting trial, and if modern plumbing, with a small amount of alteration and repair, were provided, the present jail would be entirely adequate for a hundred years to come. I deem it unnecessary for me to argue as to the crying need of all prisoners having work to perform, but it is just as essential that such work should be profitable as that labor should be profitable in any other line of business.

"The daily average number of prisoners of all grades in the workhouse and jail of the District of Columbia is approximately 840. There are 425 prisoners now being kept by the United States Government at Moundsville, W. Va., and Trenton, N. J. The approximate cost of supporting all these prisoners would be not less than $150,000 per annum, all of which expense could be saved to the Government, as I believe, provided the recommendations herein submitted should be carried out. I therefore submit the foregoing for your consideration."

ASKS FOR $50,000.

Warden Harris asks for an appropriation of $50,000 for the expenses of the prison for the year 1908. He says the sale of bones and barrels last year netted $100. Despite the lack of modern plumbing in the big prison building, the report shows that the health of the prisoners was good. The only death there during the period covered by the report was by hanging. Eleven prisoners were sent from the jail to the Government Hospital for the Insane.

There were 465 prisoners in the jail the 1st day of November of last year, while the number at the beginning of last month was 424. The report shows that 3,694 prisoners were admitted to the prison during the twelve months covered by the report, and 3,705 were released. The smallest number there any day was 410, and the largest 506. During the twelve months 17,312 persons participated in religious exercises in the prison.

[The Evening Star, February 18, 1907.]

Prison reform in Washington.

Justice Stafford, in his speech at the University Club banquet in this city Saturday night, gave utterance to views regarding the system of punishments in vogue in the District, which will awaken an approving response throughout the community. He spoke eloquently in behalf of a more humane treatment of accused persons who are now imprisoned with those convicted of crime in a jail which was outgrown years ago. He denounced the present range of penitentiary punishments for all classes of offenders and deplored the lack of a probation system and of the indeterminate sentence as means to the end of saving wrongdoers from a further course of crime. He urged the establishment here of a reformatory, to give a man a chance to do right without humiliating him by thrusting him into association with confirmed lawbreakers.

Washington should have a model punitive system. It should be in the forefront of the march of progress in the vitally important matter of correction. Instead, it is less advanced even than the average American city. It does not possess the means of caring for those of its own prisoners who have been sentenced to spend more than a year under detention. Its long-term convicts are contracted out and are subjected to the chance of circumstances that obtain in institutions of other States. It must take what it can get in this regard, and it has often got the worst. Efforts to secure provision for a model reformatory penitentiary in this District have always been thwarted by the economists, who measure such enterprises solely in terms of money cost and not in terms of moral dividends.

Progressive Washington subscribes to every one of Justice Stafford's propositions. It has with great delight witnessed the satisfactory development of the juvenile probation system, and with sorrow observed the failure of Congress to provide the means for a more humane and scientific treatment of those convicted of crime in this jurisdiction. It sincerely hopes that as a result of the [illegible]ful and convincing presentation of the local needs which Justice Stafford [illegible] gives an effective sentiment in favor of the reforms he advocates will [illegible]ndered to the end of early action by Congress.

[The Evening Star, February 17, 1907.]

Harsh treatment of criminals—Justice Stafford criticises the laws of the District—Four reforms suggested—Address at the University Club banquet last night—Prisons as moral hospitals—District supreme court jurist gives results of study of existing conditions.

Giving the concrete results of long study of conditions in the national capital, as regards its treatment of the criminal classes generally, Justice Wendell P. Stafford, of the District supreme court, in an address at the annual banquet of the University Club in the Raleigh Hotel last night, declared for the necessity of liberal reforms to bring Washington up to the humanitarian standards of modern times. Justice Stafford was called upon to respond to a toast on "The Classics," but he chose the occasion to outline to the gathering of representative men of Washington the hardships which are unavoidably worked upon "the accused and the convicted alike" under existing arbitrary laws.

JUSTICE STAFFORD'S ADDRESS.

Justice Stafford in his address said:

"I am glad and proud to sit at such a board. Here are half a thousand men who stand for culture and improvement. They have received the best their time and country had to give, and hold themselves ready to repay the debt. We speak not of the general humanities alone. Here are specialists from almost every field of servce and inquiry. Washington easily gathers such, and the gathering itself is typical of Washington. And when we have said that, have we not said typical of America? England may not be judged by London, nor France by Paris, but surely Washington must be America in miniature. Its residents are drawn from every quarter of the land. Its laws are fashioned by a body that represents all portions of the vast Republic. What the city has lost in self-government it has lost to the nation. To the nation it looks to send it wise and earnest makers of its laws. In legislating for the District of Columbia, Congress is not embarrassed by any possibility of conflict between State and Federal powers. Its hands are free. Within these 65 square miles it possesses all the legislative powers of State and nation both. Here, then, may we not hope to find the most enlightened laws and institutions?

"We recognize the obligations of culture. We realize that every gift is a trust. We know that, properly speaking, there is no such thing as a gift, and never can be; that nothing can be received without a corresponding obligation. We hold that the true test of greatness in men is the attitude they take toward their inferiors. The real hero on the ladder of life is always reaching up with one hand for the round above him, but with the other he is always reaching down to help the man below him. So a nation must be judged by the way it treats its helpless and its criminals. The State is the mother of all her children. She must deal with them as such. The prosperous and powerful have drawn their strength from her bosom. The skilled and cultivated were trained and taught at her knees. The ignorant are those whom she has failed to call around her. The poor may be those whom her imperfect or partial laws have kept in poverty. Her very criminals are too often those who have taken their vicious taint from her own blood. You do not judge a father by what he does for his gifted and promising son. But how does he treat the son who has gone astray, the son who is imbecile, or crippled, or depraved? So do we judge times and people. If Helen Keller had been born in Sparta she would have been left to the wolves on Mount Taygetus. America saved her to instruct the intellect and inspire the heart.

"SEPARATE CONVICTED AND ACCUSED.

"What shall we do with our criminals? For a quarter of a century the best thought of the world has been devoted to the problem. A few things it has learned. It has learned to separate the convicted from those who are merely accused. It has learned to build ample and sanitary jails. It has learned better than to keep men in idleness. It has learned to establish real reformatories for those who are under sentence. It has begun to teach and train the idle and vicious minds and hands. It has learned to build up as well as tear down—not only to remove the choking weeds, but to plant in their places the sweet, sustaining grain. It has learned to hold before the eyes of sorrow and despair the shining hope of a redeemed and respected life. It has learned to remold our

laws to these human ideas. For a fixed and unalterable sentence pronounced by the judge when the jury renders its verdict it puts a sentence whose duration is to be determined by the conduct and improvement of the prisoner himself as judged by those who see and watch him year by year. For the determined and incorrigible criminal it says there should be no release. Why should we turn back upon society its avowed and inveterate foes? For the penitent there should be the promise of conditional release when safe surroundings can be assured and a new trial ventured. It has learned another thing—that even among grown men and women the first offense may be the last if the offender can be given another chance and saved the infamy of a prison cell. The probation system hangs over his head the sword of Damocles and he knows the first infraction of the law will bring it down.

"THE REFORMS ADVOCATED.

"These four things at least have been found good: (1) An ample and sanitary jail, with careful separation of the convicted and the accused. (2) A probation system for adults as well as children. (3) A reformatory in place of the old hopeless prison. (4) An indeterminate sentence permitting the guarded and conditional release of the reformed, and the perpetual detention of the incorrigible. Which of these wise changes have we adopted here? I am sorry to say, not one. (1) We have a jail intended for three hundred, where almost twice that number are confined, two or three crowded in a room; the accused and the convicted treated alike; no modern plumbing; the calls of nature answered in the cell, and out of twenty-four hours of idleness and sloth thirty minutes of exercise. (2) We have no probation system whatever except for children. A boy just past his seventeenth birthday comes up for sentence for his first offense. You can send him to the workhouse for six months or less. You can send him to the jail for not more than a year. Or if the sentence be longer than a year he can be sent to the penitentiary. But one of those three things you must do—you must smite him on the spot. (3) Excepting the reform school for children, we have no reformatory whatever. For all those graver offenses which the statutes declare shall be punished in the penitentiary we have no institution in the District. Sentence is imposed and the convict goes where the Department of Justice sends him, to some State penitentiary with which it may have a contract. Some of the States have real reformatories and laws that provide for indeterminate sentences. But we can not send our prisoners to these. Doubtless they are full already, and if they are not, we can not send our prisoners to be held or released according to the laws of other jurisdictions. What we need in this respect is a true reformatory here in the District of Columbia, and a law that will permit the offender to be sentenced for a term whose length shall be determined by the reformation of the prisoner himself—a prison that shall be what every prison ought to be, a moral hospital.

"LAW TO UPLIFT THE LOWLY.

"Is this too much to look for at the very seat of government? The capital of a nation, though it lie at the level of the sea, is a city set on a hill; it can not be hid. This capital of ours has a future of undreamed magnificence before it—destined to become the great throbbing heart of the western world through which the purple tides of patriotic life will come and go. Here the miser History will gloat upon the treasures of the past, the dreamer Prophecy will study out the stars, while the spendthrift Present pours his prodigalities on every hand. It ought to be, it must be, first and foremost in all that dignifies and justifies the ownership of sovereign power. Power can afford to be patient. The state, holding in her hands all might, need never be cruel, though for very kindness' sake she must be stern. She should never dip her hands in the blood of her sons. Her office is not merely to guard the fold, but to seek and save the lost. The capital of the new world shall be glorious not only with the homes of private splendor, the sumptuous palaces of untitled princes, with galleries of art and halls of learning, with spacious parks and noble boulevards, with monuments, viaducts, and arches that shall suggest only to put to shame the proudest triumphs of the ancient day, but most of all with law—law that shall curb the strong while it lifts up the lowly, and with mild majesty puts forth its arm to save even the hand that has been raised against it. Happy will be the sons of the morning whose eyes may see the realization of our vision—only less happy than we who in the watches of the night may labor and sacrifice for its fulfillment."

[The Evening Star, September 28, 1907.]

Study of criminology—Mr. Robert N. Harper's suggestion for reform.

Robert N. Harper, president of the chamber of commerce, is making a study of advanced ideas for the treatment and sentencing of the criminal class, with special reference to reform in the District of Columbia, and has come to the conclusion that there ought to be some radical changes here along the line of action taken in several of the States.

Mr. Harper said yesterday, in speaking of his researches, that his attention was first called to the subject by Judge W. P. Stafford, of the supreme court of the District of Columbia, who referred to it in an after-dinner speech last winter:

"It interested me at once," he said, "and I determined to investigate it and then see what could be done here in the District. I have since been in correspondence with several State governors, a number of penitentiary wardens, and others, and have become pretty thoroughly acquainted with the progress made elsewhere in this country in dealing with the morally sick."

MR. HARPER'S PLAN OUTLINED.

Mr. Harper's plan embodies, among other things, the indeterminate sentence of convicted criminals, and involves a complete change of local jail facilities. He would like to avoid the necessity of sending first offenders to Moundsville by the erection of a combined jail and penitentiary within the District limits.

His plan is to be presented to the chamber of commerce this fall, and he hopes to see it considered by other organizations of citizens in the District.

Mr. Harper thus describes his plan:

"The estimated cash value of the products raised on the West Virginia penitentiary farm for 1906, I am told, was $13,189. It is reasonable to presume, therefore, that our prisoners kept by it produced about $4,500 of this amount. The farm is small and not productive. I do not know what we pay West Virginia to keep them, but it appears to me that they might as well work for us here.

"I am told that we are accommodating in our jail about 450 prisoners. I am informed that the conditions at our United States jail for caring for the convicts in at least one respect are deplorable, if not uncivilized. At any rate, such a state of affairs should not exist at the seat of government of this great country, even though conditions may be the same in many of the States. The very fact of our not having cells enough to accommodate every inmate is sufficient justification for serious consideration for some sort of change to be made.

"By having an insufficient number of cells it becomes necessary often to place two prisoners in the same cell. When this is done we, innocently of course, too frequently lend a helping hand to make a hardened criminal out of a first offender who might by proper surroundings and associations be reformed and thereby become a respectable citizen.

UNDER THE OLD SYSTEM.

"Under the old system the criminals would be sent to prison to associate with old or hardened offenders for a fixed or definite term and be released at the end of that period possibly no better, from a moral standpoint, and frequently worse than when they went in. Under the reformatory system they have their mind and body trained with the object always in view of reformation, and when released they are supposed to be morally cured, as a patient from a hospital is supposed to be physically cured when released from that institution. But as to the indeterminate sentence, the fear which has been in the minds of some that it would shorten the time of confinement is not true, as taught by experience. The time when the prisoner is subject to parole by the board of managers is just as indefinite as the discharge of a patient from the hospital. He is paroled under the strictest rules by the board of managers when morally cured.

"As we have for so long been contracting with another State for our penitentiary criminals, the treatment of whom is the ordinary kind with stripes and work while serving out a stipulated time, minus the usual good behavior clause, but with no thought as to the change in their moral condition, should we not consider the advisability of keeping over our criminals and contracting with some States for the reformatory system if we did not see our way clear to establish something of the kind ourselves? With this done much good will have been accomplished upon most worthy lines of progress."

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 235.

TRUSTEES OF BAPTIST CHURCH, PRINCETON, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE BAPTIST CHURCH OF PRINCETON, KY., AGAINST THE UNITED STATES.

FEBRUARY 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 7, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12454. Trustees of the Baptist Church of Princeton, Ky., v. The United States.]

STATEMENT OF CASE.

This is a claim for damages to a church building occupied by the military forces of the United States during the late civil war. On the 13th day of June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 5726, Fifth-eighth Congress, third session.]

"A BILL For the relief of the trustees of the Baptist Church of Princeton, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Baptist Church at Princeton, Kentucky, the sum of six hundred and fifty dollars, for damage to their church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 27th day of September, 1907, and filed their petition, in which it is substantially averred:

That during the fall of 1862 the military forces of the United States, by proper authority, took possession of the church building of the Baptist Church at Princeton, Ky., and used and occupied the same for hospital purposes, quarters, etc., at

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 235.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 235.

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I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12454. Trustees of the Baptist Church of Princeton, Ky., v. The United States.]

STATEMENT OF CASE.

This is a claim for damages to a church building occupied by the military forces of the United States during the late civil war. On the 13th day of June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 5726, Fifth-eighth Congress, third session.]

"A BILL For the relief of the trustees of the Baptist Church of Princeton, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Baptist Church at Princeton, Kentucky, the sum of six hundred and fifty dollars, for damage to their church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 27th day of September, 1907, and filed their petition, in which it is substantially averred:

That during the fall of 1862 the military forces of the United States, by proper authority, took possession of the church building of the Baptist Church at Princeton, Ky., and used and occupied the same for hospital purposes, quarters, etc., at

various times until the close of the war. That among other troops occupying said building was the Forty-eighth Kentucky Infantry.

That by reason of such occupancy repairs were necessary, and the cost to restore the said building to the condition in which it was at the time said occupancy commenced was the sum of $650, for which no payment has been made.

That said claim, including an item for rent, was presented to the accounting officers of the Treasury Department, and an allowance of $150 was made and paid for the rent, but the item of repairs was disallowed for want of jurisdiction.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

G. W. Hott, esq., appeared for the claimants, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Baptist Church of Princeton, Ky., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States took possession of the church building described in the petition, and used and occupied the same for hospital purposes for several months, and damaged the same.

On April 10, 1878, the Third Auditor of the Treasury Department referred to the Quartermaster-General's Department a claim in favor of the claimant church herein for $800 for the use and occupation of said building and for damages thereto. On September 27, 1879, payment was made to the trustees of said church in the sum of $150 for rent, but the claim for damages was disallowed for want of jurisdiction.

The reasonable compensation for the damages sustained in excess of ordinary wear and tear was then and there the sum of one hundred and ten dollars ($110), no part of which appears to have been paid.

III. The claim was presented by the claimant church to the Third Auditor of the Treasury Department in 1878 for $800 for use and occupation of said building and damages thereto, upon which there was paid $150 for rent and the claim for damages disallowed for want of jurisdiction. Thereafter, on June 13, 1906, the claim was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

No other competent evidence is adduced respecting the delay in the presentation of said claim.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 7th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 236.

TRUSTEES OF PRESBYTERIAN CHURCH, SPRINGFIELD, W. VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE PRESBYTERIAN CHURCH OF SPRINGFIELD, W. VA., AGAINST THE UNITED STATES.

FEBRUARY 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE.
Washington, February 7, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional Case No. 12440. Trustees of the Presbyterian Church of Springfield W. Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the civil war. On the 13th day of June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 1316, Fifty-ninth Congress, first session.]

"A BILL For the relief of the trustees of the Presbyterian Church of Springfield, West Virginia.]

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Presbyterian Church of Springfield, West Virginia, the sum of one thousand five hundred dollars, for use of and damage to their church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 18th day of February, 1907, and filed their petition, in which it is substantially averred:

That during the late war for the suppression of the rebellion, and on or about December, 1861, the military forces of the United States, by proper authority, took

possession of the church building of the Presbyterian Church at Springfield, Hampshire County, W. Va., and used and occupied the same at various times from said date until the close of the war for quarters, hospital, guardhouse, and finally as a stable.

That the reasonable rental value of said building during the period it was so occupied, including the repairs necessary to restore the building to the condition in which it was at the time the said military forces took possession, was the sum of $1,500, for which no payment has been made.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by Clark McKercher, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACTS.

I. The Presbyterian Church of Springfield, W. Va., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same for hospital and other purposes, and damaged the same. The reasonable rental value of such use and occupation, together with the damages thereto in excess of ordinary wear and tare, was then and there the sum of six hundred dollars ($600), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore stated, and no reason is given why the bar or any statute of limitation should be removed, or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 7th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 237.

TRUSTEES OF LYNN CREEK BAPTIST CHURCH, GILES COUNTY, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF LYNN CREEK BAPTIST CHURCH OF GILES COUNTY, TENN., AGAINST THE UNITED STATES.

FEBRUARY 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 7, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 13165. Trustees of Lynn Creek Baptist Church, of Giles County, Tenn., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8601, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of Lynn Creek Baptist Church, of Giles County, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of Lynn Creek Baptist Church, of Giles County, Tennessee, the sum of one thousand dollars, as compensation for the use and occupation of and damage to the church building by the Federal troops during the late civil war."

The claimants appeared in this court on the 25th day of March, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war, and on or about September, 1863, the military forces of the United States, consisting of the Fiftieth Illinois Regiment, and the Eighteenth Missouri Regiment, under command of Colonel Bain, took possession of the church

building of Lynn Creek Baptist Church, of Giles County, Tenn., and removed the said building, appropriating the material therein to the use of the army in building winter quarters.

That said building at the time of its removal as aforesaid, was reasonably worth the sum of one thousand dollars ($1,000), no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 13th day of January, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by A. C. Campbell, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Lynn Creek Baptist Church, of Giles County, Tenn., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition, and tore down and removed said building, and used the material therein for the erection of winter quarters; the said building at said time and place was reasonably worth the sum of six hundred dollars ($600), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress, and reference to this court by resolution of the United States Senate, as hereinbefore mentioned, and no reason is given why the bar of any statute of limitation should be removed, or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 7th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 238.

GRAND LODGE INDEPENDENT ORDER OF ODD FELLOWS OF STATE OF TENNESSEE.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE GRAND LODGE INDEPENDENT ORDER OF ODD FELLOWS OF THE STATE OF TENNESSEE AGAINST THE UNITED STATES.

FEBRUARY 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 13161. Grand Lodge Independent Order of Odd Fellows of the State of Tennessee *v.* The United States.]

STATEMENT OF CASE.

This is a claim for the use of and damage to lodge property by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8600, Fifty-ninth Congress, second session.]

"A BILL For the relief of the Grand Lodge Independent Order of Odd Fellows of the State of Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Grand Lodge, Independent Order of Odd Fellows, of the State of Tennessee, the sum of one thousand five hundred dollars, in full payment and satisfaction for the use, possession, occupation of, and damage and destruction to the lodge building and property of subordinate Lodge Numbered Forty-four of the Independent Order of Odd Fellows, which said lodge became defunct after the close of

the late civil war and after its use, occupation, and possession and damage to said property by the Federal troops; and the rights, interest, and property of said subordinate lodge, when it became defunct, passed to and became the rights and property of said grand lodge."

The claimant appeared in this court and filed its petition on the 26th day of June, 1907, in which it is substantially averred:

That during the year 1855 the Independent Order of Odd Fellows of Lynnville, Tenn., in conjunction with the Presbyterian Church at said place, erected a brick building, 40 by 60 feet, containing two stories and a basement; that the said Odd Fellows lodge paid one-third of the cost of constructing said building, and the upper story thereof became the property of the said lodge.

That thereafter the said Odd Fellows' Lodge of Lynnville, Tenn., disbanded, and under the laws and regulations in force all of the rights, title, interest, and claims of said lodge vested in the Grand Lodge, Independent Order of Odd Fellows, of the State of Tennessee.

That during the month of September, 1863, the military forces of the United States under command of Colonel Bain, of General Dodge's command, took possession of said building and used and occupied the same for a smallpox hospital until March, 1864. That a smallpox flag was kept on said building until the fall of 1864, when the same was destroyed by fire by the military forces of the United States under command of General Starkweather.

That the value of the interest of the Independent Order of Odd Fellows in said building and furniture at the time the said military forces of the United States took possession was the sum of $1,500, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 13th day of January, 1908.

G. W. Z. Black, esq., appeared for the claimant, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Independent Order of Odd Fellows at Lynnville, Tenn. (of which lodge the Grand Lodge, Independent Order of Odd Fellows of the State of Tennessee, is the successor), was, as an organization, loyal to the Government of the United States throughout the late civil war.

II. During said war the military forces of the United States took possession of the building jointly owned by the Presbyterian Church and the Independent Order of Odd Fellows of Lynnville, Tenn., and used and occupied the same for hospital purposes for a period of about six months. Thereafter, and during the fall of 1864, said military forces, under orders therefor, set fire to a number of buildings in said town and burned the same, among which was the building herein mentioned, said Presbyterian Church owning two-thirds and the lodge herein one-third interest. The reasonable compensation for the use and destruction of one-third of said building so used and destroyed was at the time and place the sum of seven hundred dollars ($700), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

By the Court.

Filed February 3, 1908.
A true copy.
Test this 7th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 239.

HOWARD LODGE NO. 13, INDEPENDENT ORDER ODD FELLOWS, GALLATIN, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF HOWARD LODGE NO. 13, INDEPENDENT ORDER ODD FELLOWS, OF GALLATIN, TENN., AGAINST THE UNITED STATES.

FEBRUARY 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 8, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11624. Howard Lodge, No. 13, Independent Order of Odd Fellows, of Gallatin, Tenn., v. The United States.]

STATEMENT OF CASE.

In the above-entitled claim for the use, occupation, and damage to the interior fittings of the buildings known as the Howard Female Institute, a girls' school, located in Gallatin, Tenn., and a brick building located on the public square known as the Odd Fellows Hall, by the military forces of the United States during the late civil war, a bill was introduced in the Fifty-eighth Congress, first session, for the relief of the claimant, being Senate bill No. 806. Said bill reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he hereby is, authorized and directed to pay to the treasurer of Howard Lodge, Numbered Thirteen, Independent Order of Odd Fellows, of Gallatin, Tennessee, the sum of seven thousand four hundred and forty-eight dollars, out of any money in the Treasury not otherwise appropriated, to reimburse said lodge Numbered Thirteen, Independent Order of Odd Fellows, for the use, occupation and destruction of its buildings and other property consumed and destroyed by soldiers of the United States during the late war."

Said bill was referred to this court by resolution of the Senate on the 27th day of April, 1904, for findings of fact under the terms of the act approved March 3, 1887, commonly known as the Tucker Act.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

George A. and William B. King, esqs., appeared for the claimant, and the Attorney-General, by George E. Boren, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants in their petition make the following allegations:

That during the civil war the Howard Lodge, No. 13, Independent Order of Odd Fellows, of Gallatin, Tenn., did not give any aid or comfort to the rebellion, but was throughout that war loyal to the Government of the United States.

That the following property belonging to said Howard Lodge, No. 13, Independent Order of Odd Fellows, was, by direction of officers of the United States Army, occupied and used by said Army—date, place, and command being particularly stated below:

In Gallatin, Tenn., from November, 1862, to August, 1865, by the Eleventh Michigan, Sixty-ninth Ohio, and Ninth Indiana Regiments Volunteer Infantry, U. S. Army, to wit:

Howard Female Institute sustained the following loss:

40 double desks, at $10	$400
3 blackboards, at $10	30
2 large brick privies, at $200	400
1 hothouse, brick and glass	300
Lumber (fencing)	150
Stable and shed	150
1 round center table	20
6 small tables, at $5	30
6 coal grates, at $10	60
Plastering and papering	300
Rent of building occupied by Medical Department, U. S. Army, for hospital purposes from November, 1862, to August 1, 1865, thirty-three months, at $100 per month	3,300

The following was taken from Odd Fellows' Hall:

Counters, shelving, drawers and desk, all taken from room fitted up for dry goods store	300
Counters, shelving, desk and drawers, all taken from room fitted up as drug store	400
1 pair window shutters and transom light	14
1 stove and pipe	25
6 windows, glass and sash (damaged)	25
6 oilcloth window blinds	24
Papering on wall	40

The lodge room sustained the following loss:

1 bookcase and desk (large)	70
48 dining office chairs, at $5	240
Lodge regalia and emblems	200
8 window shades, $40; window sash and glass, $100	140
2 tables, at $5	10
8 door locks	30
Damage to papering, plastering, sprinklers, etc	50

Bethel Encampment, No. 9, Independent Order of Odd Fellows, sustained the following loss:

Camp regalia, tent crooks, jewels, furniture, and one large desk	510
Total	7,448

The court, upon the evidence, and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. Howard Lodge, No. 13, Independent Order of Odd Fellows, of Gallatin, Tenn., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States by proper authority took possession of the lodge buildings described in the petition and used

and occupied the same for hospital purposes and damaged the same. The reasonable rental value of such use and occupation, together with damages thereto in excess of ordinary wear and tear, was then and there the sum of two thousand three hundred dollars ($2,300), no part of which appears to have been paid.

III. The claim herein was originally referred to the court by the Committee on War Claims of the House of Representatives on the 1st day of March, 1889, under the provisions of the act of March 3, 1883, known as the Bowman Act. Thereafter the claim was again referred to the court by resolution of the United States Senate on the 27th day of April, 1904, under the provisions of the act of March 3, 1887, known as the Tucker Act, and upon motion of the claimant, on May 25, 1904, the two causes were consolidated. Prior to the first presentation of the same to Congress and reference to this court as aforesaid, the claim had never been presented to any department of the Government, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 8th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 240.

MARY ELIZABETH VERY, ADMINISTRATRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF MARY ELIZABETH VERY, ADMINISTRATRIX DE BONIS NON OF THE ESTATE OF SAMUEL VERY, JR., DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 6, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the Act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12731. Mary Elizabeth Very, administratrix de bonis non of estate of Samuel Very, jr., deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's decedent was serving as an acting master in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring to Senate bill No. 5949, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 21st day of January, 1908.

William S. Hodges, esq., appeared for claimant, and the Attorney-General, by John Q. Thompson, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes substantially the following allegations:

That she is the administratrix de bonis non of the estate of Samuel Very, jr., deceased.

That this claim was previously presented to the proper accounting officers of the Treasury Department for settlement, and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being

$645.12. This action was reported to Congress by the Secretary of the Treasury for appropriation. In appropriating for said allowance, and others of like character, Congress made the following proviso:

"That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the filing of the petition in the Court of Claims upon which the judgment was rendered, which being affirmed by the Supreme Court has been adopted by the accounting officers as the basis for the allowance of said claim."

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay as the same had been settled under the said decision in United States against Strong and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong *v.* The United States was filed in the Court of Claims. Upon such readjustment there was found to be due and then paid to claimant's decedent out of said appropriation the sum of $150.85, being the amount to which said proviso did not relate.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which claimant's decedent would have been entitled under the decision in United States *v.* Strong had Congress not prohibited the payment of same was $494.27.

Subsequent appropriation statutes have contained the same proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department and after considering briefs and arguments of counsel on both sides, makes the following.

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and resident of the State of Massachusetts, and is the administratrix de bonis non of Samuel Very, jr., deceased, whose claim under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

II. The amount found due claimant's decedent by the accounting officers under said decision was $645.12; the amount paid said decedent was $150.85, and the amount suspended under the proviso to the act of Congress approved March 2, 1889, and which still remains unpaid is four hundred and ninety-four dollars and twenty-seven cents ($494.27).

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 6th day of February, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 241.

BERNARD J. D. IRWIN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF BERNARD J. D. IRWIN AGAINST THE UNITED STATES.

FEBRUARY 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 8, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12792. Bernard J. D. Irwin *v.* The United States.]

STATEMENT OF CASE.

This is a claim for the destruction of the baggage and personal effects of an United States Army officer by military authority. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 1209, Fifty-ninth Congress, first session.]

"A BILL For the relief of B. J. D. Irwin.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Surg. B. J. D. Irwin, of the Army of the United States, the sum of one thousand seven hundred and thirty-six dollars as compensation for his personal property burned and destroyed by order of the military authorities of the United States during the war of the rebellion."

The claimant appeared in this court on the 25th day of March, 1907, and filed his petition, in which it is substantially averred:

That he is a citizen of the United States, residing in Chicago, Ill.

That he was an assistant surgeon in the United States Army in and during the year 1861, and was on duty as post surgeon serving with the United States troops stationed at Fort Buchanan, Ariz. That in accordance with orders issued June 11, 1861, he was relieved from duty at Fort Buchanan, and ordered to proceed to Fort Fillmore, N. Mex. In compliance with said orders, and the laws and regulations

then in force, he turned over to the post quartermaster, C. H. Ingraham, second lieutenant, Seventh Infantry, at Fort Buchanan, his legal allowance of baggage and personal effects, to be transported to the new station, Fort Fillmore, N. Mex.

That on or about the 3d day of August, 1861, he was serving with a command of four companies of United States troops en route from Fort Buchanan, Ariz., to Fort Fillmore, N. Mex., commanded by Capt. I. N. Moore, First Dragoons, United States Army, and said troops were escorting a quartermaster's supply train in which the baggage and personal effects belonging to him were being transported; that said Captain Moore received advice that the troops garrisoning Fort Fillmore had surrendered to a body of Texas insurgents, and intimation that a force of said insurgents were in ambush with the intent of capturing the troops under said Moore, which induced and caused the said Moore to destroy all public and private property being conveyed in the said quartermaster's wagons; that under said order the following private property belonging to your petitioner was then and there destroyed:

2 uniform coats, $30, $36	$66
1 cloth riding jacket, gold lace embroidery	35
1 cloth riding jacket, plain	25
1 black cloth frock coat	25
1 black cloth dress coat	42
1 military overcoat	50
1 beaver cloth overcoat	30
4 white marseilles vests	24
3 velvet vests	30
1 leopard-skin vest	20
1 large fur cape, otter skin	15
15 shirts, $3 each	45
2 dozen half hose, $6 per dozen	12
2 pair of blue cloth uniform pants, at $12 each	24
2 pair plain cloth pants, one black, one blue	18
6 pair white duck pants, at $6 each	36
3 linen coats	30
2 linen jackets	12
3 pair woolen blankets, at $10 per pair	30
6 sheets, at $2 each	12
1 full-dress military hat with trimmings	19
1 fatigue cap	5
1 Panama straw hat	20
1 felt hat	4
1 superfine Navajo blanket	40
1 superfine Navajo blanket	35
3 small Navajo blankets	15
2 pairs fur gloves	12
2 pairs buckskin gauntlets, $2.50 per pair	5
Silk and linen handkerchiefs	12
2 dozen shirt collars, neckties, silk cravats	10
2 pairs passants	10
1 pair shoulder knots	8
6 pairs boots and shoes	50
1 waterproof cape	10
1 hunting suit, 2 pairs of pants	12
Hunting shirts	16
Hunting knife	12
1 leather gun case, powder flask, shot pouch, ammunition	25
1 bearskin robe	20
1 leopardskin robe	30
1 hair mattress	20
Towels	6
1 large sole-leather trunk	60
1 large sole-leather trunk	32
1 large sole-leather trunk	40
1 valise	10
1 carpet	30
1 rug	10
Window curtains	10
Underclothing	24
Set of kitchen furniture	50
Dining-room furniture	50

Sundry engravings, two paintings on copper, daguerreotypes	$50
1 portable camp table, oak	10
4 portable camp chairs	8
Commissary stores	10
1 writing desk and case	15
About 100 volumes select medical and standard books	200
Cabinet collection of Navajo, Apache, Pino, Papago, Zuñi, Moigi, and other Indian warlike weapons, bows, quivers, arrows, lances, clubs, etc	100
Cabinet collection of animals, birds, reptiles, insects, and Indian crania, pertaining to Arizona and New Mexico, collected at much labor and expense during nearly seven years' service there	100
Manuscript notes, on the influence of the climate of Arizona on gunshot wounds, illustrated by 43 cases	100
Cabinet of minerals, precious and other metals, mines of Arizona, consisting of about 300 choice specimens, collected with great care during a residence of nearly four years from the various mines of that Territory, including many rare varieties of gold, silver, copper, lead, zinc, antimony, bismuth, arsenic, iron, and other metals in various form	250
Manuscript notes of three visits to Europe in 1851, 1854, 1855, private and miscellaneous papers, family relics, souvenirs, etc	100
1 mess chest, with complete outfit for three persons	50
Total	2,286

The case was brought to a hearing on its merits on the 20th day of January, 1908.

G. W. Z. Black, esq., appeared for the claimant, and the Attorney-General, by P. M. Cox, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant, Bernard J. D. Irwin, was loyal to the Government of the United States throughout the late civil war.

II. During said period the claimant herein was an assistant surgeon in the United States Army, stationed at Fort Buchanan, Territory of Arizona, and on June 11, 1861, he was ordered to duty at Fort Fillmore, N. Mex., at which time he turned over to the quartermaster of the post at said Fort Buchanan all his baggage and personal effects, to be transported to him at his new post in New Mexico; and in August thereafter his said baggage and personal effects, together with a quartermaster's supply train were burned and destroyed by order of Captain Moore, First Dragoons, in command thereof, as an act of war to prevent the same from falling into the hands of the Confederate forces, then supposed to be en route to capture said train. The reasonable value of claimant's property so destroyed was then and there nine hundred dollars ($900).

III. The claimant has been diligent in trying to collect his claim, first, through the Secretary of War, then through Congress, and afterwards by its presentation here by the United States Senate under the provisions of the act of March 3, 1887, as herein set forth in the statement of this case.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 8th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 247.

TRUSTEES OF EVANGELICAL LUTHERAN CHURCH, BURKITTSVILLE, MD.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE EVANGELICAL LUTHERAN CHURCH OF BURKITTSVILLE, MD., AGAINST THE UNITED STATES.

FEBRUARY 11, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 10, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13040. Trustees of the Evangelical Lutheran Church of Burkittsville, Md., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7274, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Evangelical Lutheran Church of Burkittsville, Md.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Evangelical Lutheran Church of Burkittsville, Md., the sum of one thousand dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said trustees of said church appeared in this court April 30, 1907, and filed a petition in which it is substantially averred that—

During the late civil war the military forces of the United States took possession of the church building of these claimants, consisting of a fine, large, well-constructed brick structure, and occupied the same as a hospital from the time of the battle of South Mountain, Maryland, in September, 1862, until about May or June, 1863, and thereby greatly injured the property; that reasonable rental value of the use and occupation and incidental injury to said property while so occupied, including the repairs necessary to restore the property to as good condition as before said occupation, was the sum of $1,000, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Evangelical Lutheran Church of Burkittsville, Md., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same as a hospital, and damaged the same. The reasonable rental value of such use and occupation, together with damages thereto in excess of ordinary wear and tear, was then and there the sum of two hundred and twenty-five dollars ($225), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States, as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed, or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.

A true copy.
Test this 6th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk of Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 248.

TONOLOWAY BAPTIST CHURCH, FULTON COUNTY, PA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TONOLOWAY BAPTIST CHURCH OF FULTON COUNTY, PA., AGAINST THE UNITED STATES.

FEBRUARY 11, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 10, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13002. The Tonoloway Baptist Church, of Fulton County, Pa., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7085, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Tonoloway Baptist Church, of Fulton County, Pennsylvania.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any moneys in the Treasury not otherwise appropriated, to the trustees of the Tonoloway Baptist Church, of Fulton County, Pennsylvania, the sum of twelve hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said trustees of said church appeared in this court April 30, 1907, and filed their petition in which it is substantially averred that—

During the late civil war the military authorities of the United States took possession of the church property of the Tonoloway Baptist Church, of Fulton

County, Pa., consisting of a very large brick building, about 60 by 45 feet in size, seating about 1,000 people, and having about 40 acres of timber land, and occupied the same as a hospital and for other military purposes, a part of the time for treatment of contagious diseases; that large quantities of timber were cut off said land and used by the military authorities for fuel, and the property otherwise greatly injured; that the reasonable rental value of said property, while so occupied, including the repairs necessary to restore it to the same condition as before such occupation, was the sum of $1,200, for which no payment has been made; that the claimant has, at all times, borne true allegiance to the Government of the United States, and had not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 6th day of January, 1908.

Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Tonoloway Baptist Church, of Fulton County, Pa., as a church was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took possession of the church property described in the petition and used the same at different times as a hospital and damaged the same. The reasonable rental value thereof, together with damages in excess of ordinary wear and tear, was then and there the sum of two hundred and twenty-five dollars ($225), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

By THE COURT.

Filed February 3, 1908.

A true copy.
Test this 6th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk of Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 249.

C. A. JARRED, ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF C. A. JARRED, ADMINISTRATOR OF THE ESTATE OF LEROY NOBLE, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 11, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 10, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11844. C. A. Jarred, administrator of the estate of Leroy Noble, deceased, *v.* The United States.]

STATEMENT OF CASE.

The following bill was referred to the Court of Claims by order of the Committee on Claims, United States Senate, in the Fifty-eighth Congress, third session, on March 3, 1905, under an act of Congress, approved March 3, 1887, known as the Tucker Act:

"[S. 5796, Fifty-eighth Congress, third session.]

"A BILL For the relief of Leroy Noble.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Leroy Noble, of Wicks, Polk County, Arkansas, the sum of three thousand one hundred and seven dollars and fifty cents ($3,107.50), in full for property taken during the civil war for the use of the Union Army."

The claimant, Leroy Noble, appeared and filed his petition herein May 23, 1905, in which he makes the following allegations:

That he lived during the civil war at Ebenezer, Mo., and was always a loyal citizen of the United States.

That at different times during the war the following property was taken from him by the troops designated, to wit:

By Missouri State militia:	
August 22, 1861—	
1 mare	$200.00
November, 1862—	
200 bushels of corn	200.00
Destroying bees and taking honey	30.00
4 hogs	30.00
By Kansas troops:	
December 5, 1862—	
1 mare and saddle	225.00
July 25, 1863—	
32 tons of hay	640.00
By Illinois troops:	
September, 1865—	
100 bushels of corn	100.00
100 bushels of oats	100.00
Honey of the value of	30.00
February, 1864—	
220 bushels of wheat	440.00
100 bushels of oats	100.00
500 bushels of corn	500.00
Feeding 39 men, night and morning	80.00
Feeding 98 mules	24.00
Feeding 34 horses	8.50
By Missouri State militia:	
September, 1864—	
2 bay mares	310.00
Total	3,107.50

That no compensation has ever been made to claimant or anyone else for this property by the United States.

That he did not know of the passage of the Tucker Act until just before he presented this claim in the Fifty-eighth Congress, third session.

The case was brought to a hearing on January 13, 1908, Ellen Spencer Mussey appearing for the claimant, and the Attorney-General, by Malcolm A. Coles, his assistant, and under his direction, appearing for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant's decedent, Leroy Noble, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took from claimant's decedent in Ebenezer, Mo., property of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of seven hundred and forty dollars ($740), no part of which appears to have been paid.

No allowance is made for meals furnished soldiers or for feed for horses.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore set forth, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.

A true copy:
Test this 10th day of February, A. D. 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 250.

TRUSTEES OF METHODIST EPISCOPAL CHURCH, PHILIPPI, W. VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE METHODIST EPISCOPAL CHURCH, OF PHILIPPI, W. VA., AGAINST THE UNITED STATES.

FEBRUARY 11, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 10, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13011. Trustees of the Methodist Episcopal Church of Philippi, W. Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation, alleged to have been furnised to military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7114, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church of Philippi, West Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church of Philippi, West Virginia, in full compensation for the occupation, use, and incidental injury to said church by the United States military forces during the civil war, the sum of two thousand dollars."

The said trustees of said church appeared in this court March 23, 1907, and filed a petition in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the property of the Methodist Episcopal Church of Philippi, W. Va., consisting of a well-constructed church building about 60 by 30 feet in size, and occupied it as a hospital in the fall of 1861, and its occupation continued practically from that time until the end of the war in 1865. That the parsonage belonging to said church, a good one-and-a-half-story frame building, was also occupied, and was torn down as a result of said occupation; that a claim for repairs was filed in the Quartermaster-General's Office in 1865, and a small sum allowed on repairs alone, but no allowance made for the rent or use and occupation of the property, and a wholly insufficient sum for the necessary repairs; that the reasonable rental value of said property during such occupation, including the repairs necessary to restoring the poperty to the same condition as before such occupation, was the sum of $1,200, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church of Philippi, W. Va., as a church was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took possession of the church property described in the petition and used the same for hospital purposes at various times and damaged the same.

In October, 1865, David F. Byrer, treasurer of said church, was paid $498.50 by Capt. Adam Fisher, acting quartermaster-general, in full for damages sustained by said church and the parsonage therewith connected.

The reasonable rental value of said church property was then and there the sum of six hundred dollars ($600), no part of which appears to have been paid.

III. The claim herein for rent of said church building was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.

A true copy.
Test this 6th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 251.

CORPORATION OF METHODIST EPISCOPAL CHURCH, HANCOCK, MD.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE CORPORATION OF THE METHODIST EPISCOPAL CHURCH OF HANCOCK, MD., AGAINST THE UNITED STATES.

FEBRUARY 11, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 10, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13043. Corporation of the Methodist Episcopal Church of Hancock, Md., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation, alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7277, Fifty-ninth Congress, second session.]

"A BILL For the relief of the corporation of the Methodist Episcopal Church of Hancock, Maryland.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the president of the corporation of the Methodist Episcopal Church, of Hancock, Maryland, the sum of one thousand dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The president of the corporation of said church appeared in this court April 30, 1907, and filed his petition, in which it is substantially averred—

That during the civil war the military authorities of the United States took possession of the building and grounds of the Methodist Episcopal Church of Hancock, Md., and used and occupied the same for camping and other military purposes for a long period during the civil war; that the carpet was destroyed, the seats taken out and destroyed, and the building generally greatly injured by said occupation that the reasonable value of the use and occupation of said property, during said period, including the repairs necessary to restore said property to the same condition it was in before such occupation was the sum of $1,000 for which no payment has been made; that the said church has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the Government.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church of Hancock, Md., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same as quarters, and damaged the same. The reasonable rental value of such use and occupation, together with damages in excess of ordinary wear and tear, was then and there the sum of five hundred and fifty dollars ($550), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.

A true copy.
Test this 6th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 252.

TRUSTEES OF PRESBYTERIAN CHURCH OF CLARKSBURG, W. VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDING OF THE COURT IN THE CASE OF THE TRUSTEES OF THE PRESBYTERIAN CHURCH OF CLARKSBURG, W. VA., AGAINST THE UNITED STATES.

FEBRUARY 11, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 10, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13025. Trustees of Presbyterian Church of Clarksburg, W. Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7158, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Presbyterian Church of Clarksburg, West Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Presbyterian Church of Clarksburg, West Virginia, the sum of one thousand five hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said trustees of said church appeared in this court March 23, 1907, and filed their petition in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the property of said claimants, consisting of a well-con-

structed brick church building, with gallery, and occupied the same for military purposes, beginning about 1862, and their occupation continuing, at intervals, throughout the entire war, and during said occupation greatly injured the same; that the reasonable rental value of said property during said occupation, including the repairs necessary to restore the property to as good condition as before the occupation, was the sum of $1,500, for which no payment has been made; that the claimant has, at all times, borne true allegiance to the Government of the United States, and has not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

Coldren & Fenning appeared for the claimants, and the Attorney-General, by William H. Lamar, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Presbyterian Church of Clarksburg, W. Va., as a church, was loyal to the Government of the United States.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same at different times for quarters for troops and damaged the same. The reasonable rental value of said building, together with damages in excess of ordinary wear and tear, was then and there the sum of five hundred and twenty-five dollars ($525), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore set forth, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.

A true copy.
Test this 6th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 253.

TRUSTEES OF FIRST BAPTIST CHURCH, DANVILLE, KENTUCKY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE FIRST BAPTIST CHURCH, OF DANVILLE, KY., AGAINST THE UNITED STATES.

FEBRUARY 11, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 10, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13020. Trustees of the First Baptist Church, of Danville, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation, alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7131, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the First Baptist Church, of Danville, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the First Baptist Church, of Danville, Kentucky, the sum of one thousand nine hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said trustees of said church appeared in this court March 25, 1907, and filed their petition, in which it is substantially averred: That during the late

civil war the military authorities of the United States took possession of the property of the First Baptist Church of Danville, Ky., consisting of a large brick church building, about 60 by 50 feet in size, and occupied it as a hospital from about October 10, 1862, for a long period; that the pews were broken up and consumed, and the property in other respects greatly injured by said occupation. That the reasonable rental value of said property during said occupation, including the repairs necessary to restore said property to the same condition in which it was before such occupation, was the sum of $1,900, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

Coldren & Fenning appeared for the claimants and the Attorney-General, by William H. Lamar, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The First Baptist Church of Danville, Ky., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same as a hospital, and damaged the same. The reasonable rental value of such use and occupation, together with damages in excess of ordinary wear and tear, was then and there the sum of seven hundred dollars ($700), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore stated, and no reason is given why the bar of any statute of limitations should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.

A true copy.
Test this 6th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 254.

RICHARD H. TURNER IN HIS OWN RIGHT AND AS ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF RICHARD H. TURNER IN HIS OWN RIGHT AND AS ADMINISTRATOR OF ESTATE OF ELIZA TURNER, DECEASED, AND ELIZA ANN TURNER AGAINST THE UNITED STATES.

FEBRUARY 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 11, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11575. Richard H. Turner in his own right and as administrator of estate of Eliza Turner, deceased, and Eliza Ann Turner *v.* The United States.]

STATEMENT OF CASE.

This is a claim for property alleged to have been taken or destroyed by the military forces of the United States during the late civil war.

On the 26th day of April, 1904, the United States Senate by resolution referred to this court under the provisions of the act of March 3, 1887, known as the Tucker Act, a bill as follows:

"[S. 2597, Fifty-eighth Congress, second session.]

"A BILL For the relief of Eliza Turner, deceased, Richard H. Turner, and Eliza Turner.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of four thousand and seventy dollars to the estate of Eliza Turner, deceased, Richard H. Turner, and Eliza Turner, in satisfaction of their claim against the United States for property taken by its troops in Florida during the late civil war."

The claimants in their petition make the following allegations:

That the property forming the basis of this claim belonging to Eliza Turner and Richard H. Turner, her son, one of the claimants, in equal parts, having come to

them in the division of the estate of David Turner, deceased, second husband of the said Eliza Turner, and father of said Richard H. Turner, claimant herein, the said David Turner having departed this life on the 12th day of January, A. D. 1858.

The said Eliza Turner was first married to George R. Adams, who died in the year of 1851, and left surviving him his said widow, Eliza, and his children George W. Adams, claimant herein, and John Adams, deceased, issue of said marriage; that the said son, John Adams, died in 1863, and left surviving him his children Alonzo Adams and Florence Adams, claimants herein, the said Florence having intermarried with William E. Brown, and sues herein by the name of Florence Brown; that the wife or widow of said John Adams died on the 4th day of January, A. D. 1857.

That subsequent to the death of the said George R. Adams, the first husband, the said Eliza intermarried with David Turner, who died on the 12th day of January, A. D. 1858, and left surviving him his widow, the said Eliza, and his son Richard H. Turner, claimant herein, and a daughter, Eliza Annie Turner, who intermarried with Stephen D. Carter, and is a claimant herein by the name of Eliza Annie Carter.

That the said Eliza Turner, now deceased, and Richard H. Turner, claimants herein, who lived on their farm near Jacksonville, in Duval County, Fla., in the time of the war for the suppression of the rebellion, and from whom the stores and supplies hereinafter described were taken for the use of and used by the United States Army, as more particularly set forth elsewhere in this petition, were loyal to the Government of the United States throughout the said war for the suppression of the rebellion.

That the said Eliza Turner departed this life on the 20th day of July, A. D. 1868; that as soon as Richard H. Turner was old enough, after the close of the war, he worked at the carpenter's trade on a small salary, scarcely earning enough to provide for himself; that his neighbors and others advised him that his claim would not be recognized unless he could show receipts of acknowledgments from the officers who took the property, and being thus misinformed and discouraged he delayed the presentation of the claim until he was advised otherwise, and he then promptly presented the claim to Congress as above alleged.

That during or about the month of July, 1864, a regiment of Union soldiers, under command of General Burney, was encamped for several days in and about the premises and farm of said Eliza Turner and Richard H. Turner, and when and while so encamped did take, for the use by the United States Army, from the said farm situated on Trout Creek, in Duval County, Fla., in the vicinity of Jacksonville, property belonging to said Eliza Turner and Richard H. Turner, and which was used by the United States Army as stores and supplies, the said property and the value thereof being more particularly described as follows:

1 dwelling house (burned)	$500
6 outhouses (burned)	300
United States gold coin	1,000
Wearing apparel, trunks, etc	350
Bedding and bed linen	200
Silverware	100
1 dray and harness	30
1 buggy and harness	50
Lot farming implements	100
1 sugar mill and kettle	60
2½ miles of fence rails (say 13,000 rails) at $20 per thousand	260
1 bay saddle horse	200
75 head stock and meat, at $10 each	750
180 head of hogs, at $3 each	540
300 head of chickens, at 50 cents each	150
100 bushels of corn, at $1 per bushel	100
Quantity of fodder	50
2 barrels of sirup, at $20 each	40
1½ barrels of sugar, at $12 per barrel	18
2 barrels of salt, at $1.50 per barrel	3
40 sides tanned leather, at $2 per side	80
2 rowboats, at $15 each	30
30-acre crop of growing corn	300
1-acre crop of sugar cane, 10 barrels of sirup	200
1½-acre crop of sweet potatoes, 500 bushels	250
Crop of vegetables	100
Fruit taken from trees	50
Total of claim	5,811

The case was brought to a hearing on loyalty and merits on January 6, 1908.

Heber J. May, esq., appeared for the claimants, and the Attorney-General, by Clark McKercher, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Eliza Turner, deceased, Richard H. Turner, and Eliza Ann Turner were loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, in Duvall County, State of Florida, took from the persons above found loyal property of the kind and character described in the petition which at the time and place of taking was reasonably worth the sum of two thousand one hundred and thirty dollars ($2,130), no part of which appears to have been paid.

No allowance is made for the gold coin, as the evidence fails to satisfactorily establish the taking thereof.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT,

Filed February 3, 1908.

A true copy.

Test this 11th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 255.

D. W. DORRIS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF D. W. DORRIS AGAINST THE UNITED STATES.

FEBRUARY 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 23, 1907.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11855. D. W. Dorris v. The United States.]

STATEMENT OF CASE.

The following bill was referred to the Court of Claims by order of the Senate of the United States on March 3, A. D. 1905, under an act of Congress approved March 3, 1887, known as the Tucker Act:

"[S. 6328, Fifty-eighth Congress, third session.]

"A BILL For the relief of Daniel W. Dorris.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he hereby is, authorized to pay, out of any money in the Treasury not otherwise appropriated, to Daniel W. Dorris, of Cado Mills, Hunt County, Texas, but formerly of Lincoln, Tennessee, the sum of one thousand one hundred and seventy-nine dollars and fifty cents, in full for property taken in November, eighteen hundred and sixty-three, for the use of the Union Army under Captain Henry."

The claimant appeared and filed his petition in this court May 19, 1905, in which he makes the following allegations:

That he is a citizen of the United States, of lawful age, and resident at Caddo Mills, Hunt County, Tex.

That during the civil war he was loyal to the United States Government, and resided in Lincoln County, State of Tennessee, and that in November, 1863, when General Sherman's army came through that part of the country, one Captain Henry and other officers of the Union Army took from me the following property:

3 horses, at $150	$450
200 bushels of corn	200
2 saddles and bridles	45
13 head of hogs, at $10	130
500 bundles of fodder	12
100 bins of oats, at $1	100
23 head of sheep, at $4	92
5,000 fence rails	150
Total	1,179

For which no compensation has ever been made, giving to me, however, receipts, one from W. O. Rickman, captain commanding Company H, Fifth Cavalry, for 100 bins of oats, dated August 11, 1864; receipt of C. H. Murray, captain, Fifth Ohio Volunteer Cavalry, for 8 bushels of corn, 200 bunches of corn fodder, 500 fence rails, under date of November 13, 1863; receipt of Thomas T. Heath, colonel Fifth Ohio Volunteer Cavalry, for 8 small pigs, 69 bushels of corn in ear, and 2,000 fence rails. The other property was taken at various times during the civil war and receipts are not obtainable, but no compensation has ever been received for this property taken.

The petitioner did not know how to collect this claim from the Government, as he had moved to Texas and knew nothing about the passage of the Tucker Act, and as soon as he was informed of the proper method of procedure he employed an attorney to present his claim to Congress.

In the Fifty-eighth Congress, second session, a bill for his relief, to wit, S. 6328, was introduced and referred to this honorable court on or about March 3, A. D. 1905, under the Tucker Act, for findings of fact.

And he claims the sum of one thousand one hundred and seventy-nine dollars and fifty cents ($1,179.50) for property taken from him for the use of the United States soldiers during the civil war, in Lincoln County, in the State of Tennessee, for which no compensation has ever been made.

Loyalty was found by the court on February 4, 1907.

The case was brought to a hearing on the merits on 11th February, A. D. 1907, Ellen Spencer Mussey appearing for the claimant, and the Attorney-General, by his assistant, Malcolm A. Coles, and under his direction, appearing for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. D. W. Dorris, the claimant herein, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States by proper authority took from the claimant in Lincoln County, State of Tennessee, property of the kind and character described in the petition, which was then and there reasonably worth the sum of seven hundred and three dollars ($703), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court under the act of March 3, 1887, as hereinbefore mentioned, and no reason is shown why the bar of any statute of limitation should be waived or which shall excuse the claimant for not having resorted to some legal remedy.

BY THE COURT.

Filed February 18, 1907.
A true copy.
Test this 23d day of February, 1907.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 259.

ALBERT V. CONWAY, TRUSTEE.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ALBERT V. CONWAY, TRUSTEE, AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12545. Albert V. Conway, trustee, *v.* The United States.]

STATEMENT OF CASE.

The following bill was referred to the court on the 27th day of June, 1906, by resolution of the United States Senate, under an act of Congress approved March 3, 1887, known as the Tucker Act:

"[S. 828, Fifty-ninth Congress, first session.]

"A BILL For the relief of Albert V. Conway, trustee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and hereby is, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Albert V. Conway, trustee, the sum of two thousand dollars, together with six per centum interest on said sum from the death of his mother, Mary Ann Boyd (formerly Mary Ann Roseberry), on the eighth day of February, eighteen hundred and ninety-eight, to and including the day of the approval of this act, in full payment of the following certificates of registered bonds of the United States, and redeemed by the Government on forged assignments, to wit: Numbered seventy-four hundred and six, act of March third, eighteen hundred and sixty-five, and numbered

twenty-six thousand two hundred and seventy-three, act of March third, eighteen hundred and sixty-five, consols of eighteen hundred and sixty-five, each of said bonds being for the sum of one thousand dollars."

The claimant appeared and filed his petition in this court on the 16th day of July, 1906, in which he makes the following allegations:

That he is a citizen of the United States and a resident of the District of Columbia, and substituted trustee for John Vansant, under the will of James Vansant, late of the State of Virginia, deceased; that said James Vansant devised his estate to his son, John Vansant, in trust, inter alia, for the benefit of the daughter of the testator, Mary Ann Roseberry, and after her death for the benefit of her children; that the trustee purchased, under the terms of the will, two United States bonds, each for the sum of $1,000, one numbered 7406, five-twenties of 1865, and one numbered 26273, consols of 1865; that the said bonds were payable to John Vansant, trustee for Mary Ann Roseberry, or his assigns.

That these bonds came fraudulently into the possession of one Josiah Wayne, in 1874, who forged the name of Vansant, trustee, to the assignments thereon, acknowledged the same, and negotiated the bonds to innocent purchasers, who surrendered them to the Treasury, which canceled them and issued new bonds in lieu thereof; that the trustee, immediately upon discovery of the fraud, repudiated the transfers and asked for reissue of the bonds to him; that subsequently the claimant was substituted as trustee under the will.

That claimant was referred to Congress for relief, and subsequently, in 1879 and 1880, the House of Representatives passed bills to that end.

That the parties to the fraud were indicted by the grand jury for the District of Columbia, but, the principal never having been apprehended, the cases were later dismissed.

That claimant is the only child of Mary Ann Roseberry, the life beneficiary, and has never been paid for the aforesaid bonds.

The case was brought to a hearing on the merits on the 23d day of January, 1908.

Mr. Philip Walker appeared for the claimant, and the Attorney-General, by Mr. F. W. Collins, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Prior to the 6th day of February, 1866, James Vansant died testate, devising his estate to his son, John Vansant, in trust, inter alia, for the benefit of the daughter of said testator, Mary Ann Roseberry, and after her death for the benefit of her children.

Under the will the trustee was given the power to substitute another in his place, and on December 14, 1874, the claimant herein, Albert V. Conway, of the District of Columbia, a loyal citizen of the United States, was substituted as such trustee.

While said John Vansant was acting as trustee he purchased under the terms of the will two United States bonds, each for the sum of one thousand dollars ($1,000), one numbered 7406, five-twenties of 1865, and one numbered 26273, consols of 1865, issued under the act approved March 3, 1865; and said bonds were made payable to said John Vansant, trustee, or his assigns, for Mary Ann Roseberry.

II. Thereafter said bonds were in the possession of said Mary Ann Roseberry with the consent of said John Vansant, trustee, and soon thereafter were delivered by said Mary Ann Roseberry to one Josiah T. Wayne, who in the year 1874 executed an assignment of said bonds in the name of said John Vansant, trustee, which bonds also bore the signature of said Mary Ann Roseberry.

The bonds so assigned were surrendered by said Wayne to the Treasury Department and were redeemed and canceled and new bonds were issued in lieu thereof, which were sold and the proceeds appropriated, presumably, to the benefit of said Josiah T. Wayne and Mary Ann Roseberry.

III. Soon after the assignment of said bonds as aforesaid, to wit, in September, 1874, said John Vansant, trustee, addressed a letter to the Secretary of the Treasury, in which he repudiated the transfer of said bonds, and declared them as fraudulent, and asked that new bonds be issued him in place of those transferred and redeemed as aforesaid, but he was advised by the Secretary of the Treasury that he had no authority to reissue the same.

Thereafter, to wit, on April 5, 1875, true bills were returned by the grand jury for the District of Columbia, charging said Wayne with forging said assignments, and against Charles E. Boyd, Thomas Boyd, and Mary Ann Roseberry for procuring

said forgery. Said Wayne was never taken into custody, and the two Boyds were placed in jail and subsequently released on bail, and the said indictments were never prosecuted and were thereafter nol-prossed.

IV. Said Mary Ann Roseberry died in the year 1898, leaving as her only heir at law said Albert V. Conway, so designated as trustee, and said trustee is now the sole beneficiary under said trust and has received no part of the face value of said bonds except the sum of about one hundred dollars ($100) paid to him during the lifetime of his mother, said Mary Ann Roseberry, on account of said bonds.

V. The claim was presented to the Forty-sixth, Forty-seventh, Forty-eighth, Forty-ninth, Fiftieth, Fifty-first, Fifty-fifth, Fifty-sixth, Fifty-seventh, and Fifty-ninth Congresses. It does not appear that any suit was ever instituted by said John Vansant or by the claimant herein as trustee in any court of law or equity to recover said bonds or to set aside the assignments so made as aforesaid.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 260.

HANNAH NALLY, EXECUTRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF HANNAH NALLY, EXECUTRIX OF WILLIAM A. NALLY, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11115. Hannah Nally, executrix of William A. Nally, deceased, *v.* The United States.]

STATEMENT OF CASE.

The following bill was referred to the court March 2, 1903, by resolution of the United States Senate under an act of Congress approved March 3, 1887, known as the Tucker Act:

"[S. 2980, Fifty-seventh Congress, first session.]

'A BILL For the relief of the estate of William A. Nally.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Hannah Nally, of Zoneton, Bullitt County, Kentucky, widow of William A. Nally, deceased, the sum of three thousand three hundred dollars, for property taken from the said William A. Nally and used by the troops of the United States Army."

The claimant appeared and filed her petition in the court July 25, 1903, in which she makes the following allegations:

The decedent, William A. Nally, was loyal to the Government of the United States thoughout his life, and resided in the State of Kentucky until his decease.

During the late civil war the decedent was the proprietor of a brickyard in the city of Louisville, Ky., where he carried on an extensive brick-making business. In

the summer of 1862, while the decedent was carrying on his said business, the premises were taken posession of by the United States troops in command of Gen. L. H. Rousseau, then in occupation of the city of Louisville. The decedent at the time had on the premises for use in connection with his business extensive sheds and 600 cords of seasoned wood; the lot, which comprised a city square and a half of land, being inclosed with a staked and ridered ten-rail fence, the property of the decedent. The soldiers, acting under the direction of their officers, carried away and used the wood, the planks of which the sheds were made, and the fencing above mentioned.

The following are the items of the property so taken and used by the soldiers and their values:

600 cords of wood, at $5.50 per cord	$3,300
45,000 feet of lumber, at $15 per M	675
250 panels of fencing, at 50 cents each	125
Total	4,100

The case was brought to a hearing on loyalty and merits on the 15th day of January, 1908.

Messrs. Dudley & Michener appeared for the claimant, and the Attorney-General, by P. M. Cox, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. William A. Nally, deceased, was loyal to the Government of the United States throughout the late civil war.

II. During said period there was taken from the claimant's decedent in Louisville, Ky., by the military forces of the United States, for their use, to wit, in December, 1861, 270½ cords of wood, for which said decedent was paid the sum of $811.50. Thereafter, in 1862, there was taken from said claimant's decedent by said military forces, for their use, property of the kind and character described in the petition, then and there reasonably worth the sum of two thousand and thirteen dollars ($2,013), for which no payment appears to have been made.

III. The claim herein was presented to the Quartermaster-General October 8, 1879, and was by that officer disallowed May 10, 1886, because he was not satisfied from the evidence that the property claimed for had been taken as alleged. Thereafter the same was presented to Congress, and referred to this court March 2, 1903, by resolution of the United States Senate, as hereinbefore set forth in the statement of the case.

No other competent evidence has been adduced respecting the delay in the prosecution of said claim.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 261.

TRUSTEES OF CUMBERLAND PRESBYTERIAN CHURCH, CHARLESTON, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE CUMBERLAND PRESBYTERIAN CHURCH OF CHARLESTON, TENN., AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11699. Trustees of the Cumberland Presbyterian Church of Charleston, Tenn., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 27th day of April, 1904, the Senate of the United States referred to the court a bill in the following words:

" [S. 3591, Fifty-eighth Congress, second session.]

"A BILL For the relief of the trustees of the Cumberland Presbyterian Church of Charleston, Tenn.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Cumberland Presbyterian Church of Charleston, Tennessee, the sum of one thousand and forty dollars, for use of and damage to church property by the military forces of the United States during the late war of the rebellion."

The claimants appeared in this court April 25, 1907, and filed their petition, in which it is substantially averred:

That during the fall of 1864 the military forces of the United States, under command of Lieut. J. F. Gifford, Second Ohio Artillery, and acting assistant quartermaster, took possession of the church building of the Cumberland Presbyterian

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 255.

D. W. DORRIS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF D. W. DORRIS AGAINST THE UNITED STATES.

FEBRUARY 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 23, 1907.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11855. D. W. Dorris v. The United States.]

STATEMENT OF CASE.

The following bill was referred to the Court of Claims by order of the Senate of the United States on March 3, A. D. 1905, under an act of Congress approved March 3, 1887, known as the Tucker Act:

"[S. 6328, Fifty-eighth Congress, third session.]

"A BILL For the relief of Daniel W. Dorris.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he hereby is, authorized to pay, out of any money in the Treasury not otherwise appropriated, to Daniel W. Dorris, of Cado Mills, Hunt County, Texas, but formerly of Lincoln, Tennessee, the sum of one thousand one hundred and seventy-nine dollars and fifty cents, in full for property taken in November, eighteen hundred and sixty-three, for the use of the Union Army under Captain Henry."

The claimant appeared and filed his petition in this court May 19, 1905, in which he makes the following allegations:

That he is a citizen of the United States, of lawful age, and resident at Caddo Mills, Hunt County, Tex.

Church, of Charleston, Tenn., and used and occupied the same for quarters and commissary storehouse for a period of three or four months.

That said building was erected about the year 1860, and was in good condition at the time the said military forces took possession. That at the termination of said occupancy the pews, pulpit, windows, window frames, and doors were destroyed, and the floor, plastering, and walls of the building damaged and defaced.

That the reasonable rental value of said building during the period it was so occupied, including the repairs necessary to restore the building to the condition in which it was at the time the said military forces took possession, was the sum of $1,040, for which no payment has been made.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by Malcolm A. Coles, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Cumberland Presbyterian Church, of Charleston, Tenn., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of and occupied claimant church as hospital and storehouse and damaged the same. The reasonable rental value thereof, together with damages in excess of ordinary wear and tear, was the sum of five hundred and thirty dollars ($530), no part of which appears to have been paid.

III. The claim herein was presented to the Quartermaster-General under the act of July 4, 1864, and disallowed because of lack of sufficient proof, and was then presented to Congress and referred to this court by resolution of the United States Senate, as hereinbefore stated in the statement of this case.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 262.

TRUSTEES OF CHRISTIAN CHURCH, UNION CITY, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE CHRISTIAN CHURCH OF UNION CITY, TENN., AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 18113. Trustees of the Christian Church of Union City Tenn., v. The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8268, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Christian Church of Union City, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Christian Church of Union City, Obion County, Tennessee, the sum of three thousand dollars, for use and destruction of their church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 31st day of May, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war, and in the month of November, 1863, the military forces of the United States, consisting of the Fourth Missouri Cavalry, took possession of the church building of the Christian Church of Union City, Tenn., and removed the said building, furniture, and fixtures, and appropriated the material to

the use of the United States Army in building quarters for the troops. That said church building, furniture, and fixtures were reasonably worth at the time of the use and appropriation as aforesaid the sum of $3,000, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by George E. Boren, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Christian Church of Union City, Tenn., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period there was taken possession of by the military forces of the United States for their use the church building described in the petition, which was occupied for a short time and then torn down, and the material thereof was used in the erection of barracks and otherwise for the use of the Army. The reasonable value of said building, together with the use and occupation thereof for the brief period, was at the time and place eight hundred and fifty dollars ($850), for which no payment appears to have been made.

III. The claim herein was first presented to the Quartermaster-General under the act of July 4, 1864, and disallowed for want of jurisdiction. It was then referred to the court under the provisions of the act of March 3, 1887, as hereinbefore stated in the statement of this case. No other evidence is adduced respecting the delay in the presentation and prosecution of this case.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 263.

TRUSTEES OF ST. MARK'S GERMAN REFORMED CHURCH, GETTYSBURG, PA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF ST. MARK'S GERMAN REFORMED CHURCH, OF GETTYSBURG, PA., AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13004. Trustees of St. Mark's German Reformed Church, of Gettysburg, Pa., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7067, Fifty-ninth Congress, second session.]

"A BILL For the relief of the consistory of Saint Mark's German Reformed Church, of Gettysburg, Pennsylvania.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the consistory of Saint Mark's German Reformed Church, of Gettysburg, Pennsylvania, the sum of six hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said consistory of said church appeared in this court April 30, 1907, and filed there a petition in which it is substantially averred that:

During the late civil war the military authorities of the United States took possession of the property of the St. Mark's German Reformed Church, of Gettysburg, Pa.,

consisting of a large church building about 40 by 50 feet in size, with gallery, and occupied the same as a military hospital for a considerable period of time following the battle of Gettysburg, Pa., July 3, 1863, and the property was thereby greatly injured.

A claim was filed in the Quartermaster-General's office for payment for damages to the property, but no claim was ever presented on account of rent for use and occupation; that the reasonable rental value of said property during said occupation, including repairs necessary to restore said property to the same condition as before such occupation, was the sum of $600, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 22d day of January, 1908.

Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The St. Mark's German Reformed Church, of Gettysburg, Pa., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of said church building described in the petition and used and occupied the same for hospital purposes, and damaged the same. The reasonable rental value of such use and occupation, together with the incidental injury to said church building in excess of ordinary wear and tear, was then and there the sum of two hundred and fifteen dollars ($215), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned, and no reason is given why the bar of any statute limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 264.

TRUSTEES OF CHRISTIAN CHURCH, FRANKLIN, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE CHRISTIAN CHURCH, OF FRANKLIN, TENN., AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 13110. Trustees of the Christian Church, of Franklin, Tenn., v. The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8150, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Christian Church, in Franklin, Williamson County, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Christian Church, in Franklin, Williamson County, in the State of Tennessee, the sum of one thousand five hundred dollars for use and occupation of and damage to church building and furnishings by the military forces of the United States during the late war of the rebellion."

The claimants appeared in this court on the 25th day of March, 1907, and filed their petition, in which it is substantially averred—

That during the month of November, 1864, the military forces of the United States, under command of General Opdyke, took possession of the church building of the Christian Church at Franklin, Tenn., and used and occupied the same for hospital

and other purposes until after the close of the war. That during said occupancy the walls of the church were damaged, and the pews, pulpit, furniture, fixtures, doors, and windows were removed and destroyed.

That the reasonable rental value of the building during the period it was so occupied, including the repairs necessary to restore the building and contents to the condition in which they were at the time the said military forces took possession, was the sum of $1,500, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by George E. Boren, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Christian Church of Franklin, Tenn., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition, and used and occupied the same for hospital and other purposes, and damaged the same. The reasonable rental value of such use and occupation, together with the damages thereto in excess of ordinary wear and tear, was then and there the sum of six hundred and twenty dollars ($620.00), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 265.

TRUSTEES OF DOWNING METHODIST EPISCOPAL CHURCH SOUTH, OAK HALL, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF DOWNING METHODIST EPISCOPAL CHURCH SOUTH, OF OAK HALL, VA., AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United State Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12512. Trustees of Downing Methodist Episcopal Church South, of Oak Hall, Va., v. The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 13th day of June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 4023, Fifty-ninth Congress, first session.]

"A BILL For the relief of the trustees of the Downing Methodist Episcopal Church South, of Oak Hall, Accomac County, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Downing Methodist Episcopal Church South, of Oak Hall, Accomac County, Virginia, the sum of five hundred dollars, in full compensation for the use, occupation, and destruction of property by the Federal forces during the late civil war."

The claimants appeared in this court March 25, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war, and in the fall of 1861, the military forces of the United States under command of Gen. Henry A. Lockwood took possession of the

church building of the Downing Methodist Episcopal Church South, of Oak Hall, Accomac County, Va., and used and occupied the same for military purposes for several weeks. That during said occupation the said military forces destroyed the plastering, ceiling, pews, windows, shutters, and otherwise injured the said building. That the cost to restore the building to the condition in which it was at the time the said military forces took possession was the sum of $500, for which no payment has been made.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

C. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by Malcolm A. Coles, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Downing Methodist Episcopal Church South, of Oak Hall, Va., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same, but for what purpose does not appear, and damaged the same. The reasonable rental value of such use and occupation, together with damages in excess of ordinary wear and tear, was then and there the sum of two hundred and thirty-five dollars ($235.00), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed, or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 266.

TRUSTEES OF BAPTIST CHURCH OF HARRODSBURG, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE BAPTIST CHURCH OF HARRODSBURG, KY., AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13000. Trustees of the Baptist Church of Harrodsburg, Ky., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation, alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to this court a bill in the following words:

"[S. 7033, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Baptist Church of Harrodsburg, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any moneys in the Treasury not otherwise appropriated, to the trustees of the Baptist Church of Harrodsburg, Kentucky, the sum of three thousand dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said trustees of said church appeared in this court March 22, 1907, and filed their petition, in which it is substantially averred—

That during the late civil war the military authorities of the United States took possession of the property of the Baptist Church of Harrodsburg, Ky., consisting of a large, well-constructed brick church, and occupied the same directly after the battle of Perryville, Ky., October 9, 1862, and for a long period thereafter; that it was used for housing commissary stores, including meats, the grease from which so penetrated

the walls as to cause great permanent injury to the building; that the pulpit was destroyed and the property otherwise very much damaged by said occupation; that the reasonable rental value of said property during the said occupation, including the repairs necessary to restore said property to the same condition as before said occupation, was the sum of $3,000, for which no payment has been made; that the claimants have at all times borne true allegiance to the Government of the United States and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

Coldren & Fenning appeared for the claimants and the Attorney-General, by Percy M. Cox, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Baptist Church of Harrodsburg, Ky., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of said church building described in the petition and used and occupied the same as a commissary and damaged the same. The reasonable rental value of such use and occupation, together with the damage to same in excess of ordinary wear and tear, was then and there the sum of six hundred and seventy-five dollars ($675), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH.
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 267.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, OF MEXICO, MO.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF MEXICO, MO., AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13158. Trustees of the Methodist Episcopal Church South, of Mexico, Mo., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8591, Fifty-ninth Congress, second session.]

"A BILL For the relief of the Methodist Episcopal Church South, of Mexico, Missouri.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Mexico, Missouri, the sum of two thousand dollars, in full compensation for the occupation, use, and incidental injury to the property of said church by United States military forces during the civil war."

Said trustees of said church appeared in this court March 25, 1907, and filed their petition, in which it is substantially averred that:

During the late civil war the military authorities of the United States took possession of the property of the Methodist Episcopal Church South, of Mexico, Mo., consisting of a well-constructed brick church building about 60 or 70 feet in length

by 40 feet in width, and occupied the same for about three years, at times as a prison or guardhouse, at times as a commissary, and for other military purposes, and thereby greatly injured the property; that a claim was filed in the Quartermaster-General's Office soon after the war, but payment was never made; that the reasonable rental value of said property during said occupation, including the repairs necessary to restore said property to the same condition as before such occupation, was the sum of $2,000, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

Coldren & Fenning appeared for the claimants, and the Attorney-General, by W. H. Lamar, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Mexico, Mo., was, as a church, loyal to the Government of the United States throughout the late civil war.

II. During the late civil war there was taken possession of by the Missouri State Militia the church building described in the petition and by them used and occupied from time to time for a period of about two years, and damaged the same. The reasonable rental value thereof during said period, together with damages thereto in excess of ordinary wear and tear, was then and there the sum of seven hundred and ten dollars ($710), no part of which appears to have been paid.

III. A claim was presented by the claimant church herein to the Quartermaster-General for rent and repairs amounting to $2,980, and by that officer suspended in November, 1896, for want of sufficient testimony. Thereafter the claim herein was presented to Congress and referred to this court March 2, 1907, by resolution of the United States Senate, as hereinbefore set forth in the statement of the case.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 268.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, DEEP CREEK, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF DEEP CREEK, VIRGINIA, AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12425. Trustees Methodist Episcopal Church South, of Deep Creek, Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and injury to a church building by the military forces of the United States during the late civil war. On the 13th day of June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 2590, Fifty-ninth Congress, first session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Deep Creek, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Deep Creek, Virginia, the sum of three thousand dollars, for use and destruction of church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 25th day of April, 1907, and filed their petition, in which it is substantially averred:

That during the fall of 1862 the military forces of the United States, under command of Gen. Egbert L. Viele, took possession of the church building belonging to

the Methodist Episcopal Church South, situate near Deepcreek, Norfolk County, Va., and removed the said building and appropriated the material to the use of the United States Army in building barracks and used the same until the close of the war; that said building, at the time of its removal, including furniture and fixtures which were also taken, was reasonably worth the sum of $3,000, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by P. M. Cox, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Deepcreek, Va., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took possession of the said church building and tore down the same and used the material thereof in the erection of barracks. The reasonable value of said building at the time and place of taking was the sum of nine hundred dollars ($900.00), no part of which appears to have been paid.

III. The foregoing claim was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as aforesaid, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 11th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 269.

METHODIST EPISCOPAL CHURCH SOUTH, OF BELLEFONTE, ALA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF BELLEFONTE, ALA., AGAINST THE UNITED STATES.

FEBRUARY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 12, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12404. Methodist Episcopal Church South, of Bellefonte, Ala., v. The United States.]

STATEMENT OF CASE.

By resolution of the United States Senate adopted June 13, 1906, Senate bill No. 6393, Fifty-ninth Congress, for relief of various churches and other organizations, was referred to this court for findings of fact under the terms of the act approved March 3, 1887. Said bill, so far as is material to this particular case, reads as follows:

"A BILL For the relief of certain churches, Masonic lodges, and colleges in the State of Alabama, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to claimants in this act named the several sums appropriated herein, the same being in full for and the receipt of the same to be taken and accepted in each case as a full and final release and discharge of their respective claims for use, occupation, and damage to their buildings and grounds by United States military authorities during the civil war, namely * * *.

"To the trustees of the Methodist Episcopal Church South, of Bellefonte, Alabama, one thousand two hundred dollars."

The claimant in its petition alleges:

That during the late civil war the Methodist Episcopal Church South, of Bellefonte, Ala., was the owner of a certain frame building, used and occupied by said church as a house of worship; that during said war the United States military forces tore down and carried away the materials of said building and converted the same to the use of the United States Government; that at the time of the demolition of said building it was reasonably worth the sum of $1,200.

The case was brought to a hearing upon loyalty and merits on the 6th day of January, 1908.

Moyers & Consaul appeared for claimant, and the Attorney-General, by W. H. Lamar, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. During the late civil war the Methodist Episcopal Church South, of Bellefonte Ala., as an organization was loyal to the Government of the United States.

II. During said period the United States military forces, by proper authority, took possession of and tore down the church building belonging to the Methodist Episcopal Church South, of Bellefonte, Ala., and used the material therein contained in the erection of winter quarters. Said building at the time it was so torn down was reasonably worth the sum of three hundred and eighty dollars ($380), for which no payment appears to have been made.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned, and no reason is given why the bar of any statute of limitation should be removed, or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed January 13, 1908.
A true copy.
Test this 10th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 271.

TRUSTEES OF METHODIST PROTESTANT CHURCH OF FOX HILL, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST PROTESTANT CHURCH OF FOX HILL, VA., AGAINST THE UNITED STATES.

FEBRUARY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 13, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12986. Trustees of the Methodist Protestant Church, of Fox Hill, Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for a church building alleged to have been removed by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 6891, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Protestant Church of Fox Hill, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Protestant Church of Fox Hill, Virginia, the sum of one thousand dollars, for use and destruction of their church building by the military forces of the United States during the civil war."

The claimants appeared in this court on the 25th day of March, 1907, and filed their petition, in which it is substantially averred:

That during the fall and winter of 1861 the military forces of the United States, under command of General Wool, took possession of the church building of the Methodist Protestant Church at Fox Hill, Va., and removed the said building, appropriat-

ing the material to the use of the army in building quarters and for other purposes; that said building at the time of its removal was reasonably worth the sum of $1,000, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 13th day of January, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by Clark McKercher, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Protestant Church of Fox Hill, Va., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church property described in the petition, tore down and hauled away the same, but it does not appear for what purpose said material was used. The said building at said time and place was reasonably worth the sum of six hundred and twenty-five dollars ($625), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 12th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 272.

MARY McLEOD.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF MARY M'LEOD, WIDOW OF NORMAN M'LEOD, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 14, 1908.—Referred to the Committee on Claims and ordered to be printed

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 13, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH.
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 10942-C. & F. 188. Mary McLeod, widow of Norman McLeod, v. The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay whilst claimant's decedent, Norman McLeod, was serving as an officer in the Navy of the United States, to wit, an ensign upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring Senate bill 5949, for proceedings and report, under the provisions of the act of Congress approved March 3, 1887

The case was brought to a hearing on its merits on the 3d day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant, in her petition, makes substantially the following allegations:

This claim was previously presented to the proper accounting officers of the Treasury Department for settlement, and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being $326.75. This action was reported to Congress by the Secretary of the Treasury in Senate Executive Document No. 211, Fifty-first Congress, first session. In appropriating for said allowance (and others of like character) Congress made the following proviso:

"That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the filing of

the petition in the Court of Claims upon which the judgment was rendered, which, being affirmed by the Supreme Court, has been adopted by the accounting officers as the basis for the allowance of said claim."

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay, as the same had been settled under the said decision in United States against Strong, and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong v. The United States was filed in the Court of Claims. Upon such readjustment there was found to be due and then paid to claimant's decedent out of said appropriation the sum of nothing, being the amount which accrued subsequent to July 16, 1880, and to which said proviso did not relate.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which claimant would have been entitled under the decision in the United States against Strong had Congress not prohibited the payment of the same was $326.75.

Subsequent appropriation statutes have contained the said proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department and after full consideration, makes the following

FINDING OF FACTS.

Claimant is a citizen of the United States, and her deceased husband was an officer in the Navy thereof and a resident of the State of Pennsylvania, and is the identical person whose claim under the decision of the Supreme Court of the United States in United States v. Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

The amount found due claimant by the accounting officers under said decision was $326.75; the amount suspended under the proviso to the act of Congress approved September 30, 1890, and which still remains unpaid, is three hundred and twenty-six dollars and seventy-five cents ($326.75).

By the Court.

Filed February 10, 1908.

A true copy.

Test: this 12th day of February, 1908.

[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 273.

SARAH JANE BELLAH, ADMINISTRATRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF SARAH JANE BELLAH, ADMINISTRATRIX OF JAMES W. BELLAH, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 13, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12803. Sarah Jane Bellah, administratrix of the estate of James W. Bellah, deceased, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for property destroyed and for supplies taken by the military-forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 1870, Fifty-ninth Congress, first session.]

"A BILL For the relief of Sarah Jane Bellah, administratrix of the estate of James W. Bellah, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Sarah Jane Bellah, administratrix of the estate of James W. Bellah, deceased, late of the State of Georgia, the sum of thirty-two thousand nine hundred dollars, for stores and supplies taken by the military forces of the United States, amounting to the sum of eight thousand nine hundred dollars, and for the destruction of his salt works by the military authorities of the United States during the late civil war, amounting to the sum of twenty-four thousand dollars."

The claimant appeared in this court on the 25th day of March, 1907, and filed her petition, in which it is substantially averred:

That she resides in Atlanta, State of Georgia, and was duly appointed and qualified as administratrix of the estate of James W. Bellah, deceased.

That during the late civil war the said James W. Bellah resided in Pike County, State of Georgia, and owned and was operating a certain salt works situate at White Bluff, in said State; that the buildings and appurtenances thereto, comprising said salt works, were taken possession of by the military authorities of the United States, under command of General Sherman, and destroyed during the month of December, 1864; that the value of the same at the time of destruction was the sum of $24,000.

That during the month of December, 1864, there was taken from her decedent by the military forces of the United States, under command of General Sherman, and appropriated to the use of the Army, property of the kind and value, as follows:

27 mules, at $200 each	$5,400
10 wagons and harness	1,500
500 bushels of salt, at $4 per bushel	2,000
Total	8,900

The case was brought to a hearing on loyalty and merits on the —— day of ——, 1907.

G. W. Z. Black, esq., appeared for the claimant, and the Attorney-General, by John Q. Thompson, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant's decedent, James W. Bellah, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, under command of General Sherman, while operating in Chatham County, State of Georgia, took possession of and destroyed by burning, as an act of war in defensive operations, the buildings, fixtures, and appurtenances thereto belonging, including the machinery necessary for the manufacture of salt, described in the petition, the property of claimant's decedent. Said buildings, fixtures, appurtenances and machinery were then and there reasonably worth the sum of fifty-five hundred dollars ($5,500), no part of which appears to have been paid.

III. During said period the military forces of the United States, for their use, took from the claimant's decedent, in Chatham County, State of Georgia, stores and supplies of the kind and character described in the petition, which at the time and place of taking were reasonably worth the sum of two thousand nine hundred and eighty dollars ($2,980), no part of which appears to have been paid.

IV. The claim herein was first presented to Congress and referred to this court June 5, 1900, by resolution of the United States Senate under the act of March 3, 1887, and was by the court dismissed on the ground that the bill referred did not comply with the statute. Thereafter, to wit, on the 2d day of March, 1907, the claim was again referred to the court by the United States Senate, as hereinbefore set forth in the statement of the case.

No evidence has been adduced respecting the delay in the presentation and prosecution of the case.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 12th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 274.

HELEN M. DODGE.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF HELEN M. DODGE, WIDOW OF EDWARD R. DODGE, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 13, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims of the United States. Congressional, No. 18093-8. Helen M. Dodge, widow of Edward R. Dodge, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's husband was serving as an officer in the United States Navy upon receiving ships belonging to the Navy was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801 for proceedings and report under provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 10th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by John Q. Thompson, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes substantially the following allegations:

That she is the widow of Edward R. Dodge, deceased, who served in his lifetime as surgeon, United States Navy, on the receiving ship *New Hampshire*, and that during the period of such service he received shore duty pay and allowances, instead of sea pay and allowances to which he was entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay for decedent's service on receiving ship aforesaid is $147.81, and that payment of the same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and a resident of Camden, N. J., and is the widow of Edward R. Dodge, deceased, who served as surgeon on the receiving ship *New Hampshire* from December 1, 1869, to June 13, 1870.

II. For said service he has been paid the shore pay and allowances of his grade, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he has received, and sea pay and allowances, which claimant alleges she would have been entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of the same.

III. It further appears that during the time claimant's decedent was attached to said receiving ship as aforesaid he was required to have his quarters and to mess on board said vessel, to wear his uniform, and was not permitted to live with his family.

IV. The difference between the sea pay and allowances of a surgeon in the United States Navy from December 1, 1869, to June 13, 1870, and the amount which said decedent received for his service during that period, is one hundred and forty-seven dollars and eighty-one cents ($147.81), no part of which has been paid.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 12th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 275.

HEIRS OF JOHN C. CARTER.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF CHARLES E. CARTER, ELIZABETH CRAWFORD BRONSON, AND LAWRENCE C. CRAWFORD, HEIRS AT LAW OF JOHN C. CARTER, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 13, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13093-4. Charles E. Carter, Elizabeth Crawford Bronson, and Lawrence C. Crawford, heirs at law of John C. Carter, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimants' decedent was serving as an officer in the Navy of the United States upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 10th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimants, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants in their petition make substantially the following allegations:

That John C. Carter served as a commander in the United States Navy on the receiving ship *Vermont*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances, to which claimants are entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay, amounting to $372.91, is due to claimants, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and after considering briefs and arguments of counsel in both cases, makes the following

FINDINGS OF FACT.

I. The claimants are citizens of the United States and residents of Washington, D. C., and the State of New York, and claimants' decedent is the identical person who served as commander on the receiving ship *Vermont* from November 23, 1864, to June 30, 1865.

For said services claimants' decedent was paid the store pay and allowances of a commander, and no claim has ever been presented to the accounting officers of the Treasury for the difference between store pay and allowances, which claimants' decedent did receive, and sea pay and allowances which claimants claim to be entitled to under the decision of the Supreme Court of the United States in the case of United States v. Strong (95 U. S., 464) and not Congress prohibited the payment of same.

II. During the time claimants' decedent was attached to said receiving ship as aforesaid he had or was required to have his quarters and to mess on board said vessel, and was required to wear his uniform, and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of a commander from November 23, 1864, to June 30, 1865, and the amount which claimants' decedent received for his service during that period is three hundred and seventy-two dollars and ninety-one cents ($372.91), no part of which has been paid.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 12th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 276.

WILLIAM H. BACON AND ANNIE M. SMITH.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF WILLIAM H. BACON AND ANNIE M. SMITH, HEIRS AT LAW OF FRANCIS H. BACON, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 13, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 10942—C. & F. 191. William H. Bacon and Annie M. Smith, heirs at law of Francis H. Bacon, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimants' decedent, Francis H. Bacon, was serving as an officer in the Navy of the United States, to wit, an acting ensign upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring Senate bill 5949 for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 10th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants, in their petition, make substantially the following allegations:

This claim was previously presented to the proper accounting officers of the Treasury Department for settlement, and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being $186.22. This action was reported to Congress by the Secretary of the Treasury in House

Executive Document No. 144, Fifty first Congress, first session. In appropriating for said allowance (and others of like character) Congress made the following proviso:

"That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the filing of the petition in the Court of Claims upon which the judgment was rendered, which, being affirmed by the Supreme Court, has been adopted by the accounting officers as the basis for the allowance of said claim."

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay as the same had been settled under the said decision in United States against Strong, and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong *v.* The United States was filed in the Court of Claims. Upon such readjustment there was found to be due and then paid to claimant out of said appropriation the sum of nothing, being the amount which accrued subsequent to July 16, 1880, and to which said proviso did not relate.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which claimant would have been entitled under the decision in the United States against Strong had Congress not prohibited the payment of the same was $186.22.

Subsequent appropriation statutes have contained the said proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department and after full consideration, makes the following

FINDING OF FACTS.

Claimants are citizens of the United States, and claimants' decedent was an officer in the Navy thereof, and are residents of the States of New York and New Jersey, and claimants' decedent is the identical person whose claim under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

The amount found due claimants' decedent by the accounting officers under said decision was $186.22; the amount suspended under the proviso to the act of Congress approved September 30, 1890, and which still remains unpaid, is one hundred and eighty-six dollars and twenty-two cents ($186.22).

By the Court.

Filed February 10, 1908.
A true copy.
Test this 12th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 280.

WILLIAM O. ROBARDS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF WILLIAM O. ROBARDS AGAINST THE UNITED STATES.

FEBRUARY 17, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 14, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11511. William O. Robards *v.* The United States.]

STATEMENT OF CASE.

On April 26, 1904, by resolution of the United States Senate, there was referred to this court Senate bill No. 4447, Fifty-eighth Congress, for findings of fact under the terms of the act approved March 3, 1887, which said bill reads as follows:

"A BILL For the relief of Doctor William O. Robards.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to Doctor William O. Robards, of Boyle County, Kentucky, the sum of four thousand five hundred and eighty-five dollars, in full compensation for stores and supplies and services taken for the use of and used by the Federal forces during the late civil war."

The claimant in his petition makes the following allegations:

That he is a citizen of the United States, now residing in the county of Henderson, State of North Carolina; that during the late civil war he was a citizen of the United States, residing in the county of Boyle, State of Kentucky; that during said war Col. Speed S. Fry, Fourth Kentucky Infantry, U. S. Army, camped at petitioner's premises and left with petitioner, who was then a practicing physician, a large number of his soldiers, who were ill; that petitioner cared for said soldiers as a physician and

furnished food for them, having in his charge 22 sick soldiers for an average period of three months; wherefore petitioner makes claim on this account as follows:

To board and care for 22 soldiers, at $40 per month, for three months..... $2,640

That United States military forces did take from petitioner, for use of the Army, quartermaster stores and commissary supplies of the kinds and values below stated:

Harnesses	$50
3,000 bundles sheaf oats	60
3,500 bushels corn, at 50 cents per bushel	1,750
1,500 pounds bacon, at 12 cents per pound	180
2 stacks timothy hay	20
1 bay saddle mare	125
2,000 fence rails, used for fuel	60
2 fat cows, killed for beef	80
Making a total claim of	4,965

The case was brought to a hearing upon loyalty and merits on the 6th day of January, 1908.

Moyers & Consaul appeared for the claimant, and the Attorney-General, by Percy M. Cox, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. William O. Robards was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took from claimant in Boyle County, Ky., property of the kind and character above described, which at the time and place of taking was reasonably worth the sum of nineteen hundred and eighty dollars ($1,980), no part of which appears to have been paid.

No allowance is made for the soldiers' board, that being a matter of private contract or arrangement between the parties.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore set forth in the statement of the case, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 14th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 284.

TRUSTEES OF CUMBERLAND PRESBYTERIAN CHURCH, COLORED, HUNTSVILLE, ALA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE CUMBERLAND PRESBYTERIAN CHURCH (COLORED), HUNTSVILLE, ALA., AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February —, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11601. Trustees of the Cumberland Presbyterian Church (colored), Huntsville, Ala., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for a church building alleged to have been appropriated to the use of the Army by the military forces of the United States during the late civil war. On the 27th day of April, 1904, the United States Senate referred to the court a bill in the following words:

"[S. 226, Fifty-eighth Congress, first session.]

"A BILL For the relief of the trustees of the Cumberland Presbyterian Church (colored), of Huntsville, Alabama.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Cumberland Presbyterian Church (colored), of Huntsville, Alabama, the sum of five hundred dollars, for use of and damage to church building by the military forces of the United States during the late war of the rebellion."

The claimants appeared in this court on the 10th day of April, 1907, and filed their petition, in which it is substantially averred:

That during the winter of 1863–64 the military forces of the United States, under command of Brig. Gen. D. H. Stanley, took possession of the church building of the Cumberland Presbyterian Church (colored), of Huntsville, Ala., and removed the said building, appropriating the material to the use of the Army in building quarters. That said building, furniture and fixtures, at the time they were so taken and appropriated to the use of the Army, were reasonably worth the sum of $500, for which no payment has been made.

The case was brought to a hearing on loyalty and merits on the 10th day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by P. M. Cox, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Cumberland Presbyterian Church (colored), of Huntsville, Ala., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said period, to wit, during the winter of 1863–64, the military forces of the United States, by proper authority, took possession of the church building described in the petition and tore down the same and used the material thereof in the building of quarters for troops. The reasonable value of the building so destroyed was at the time and place the sum of two hundred and twenty dollars ($220), no part of which appears to have been paid.

III. The claim herein was presented to the Quartermaster-General's Department and disallowed October 3, 1866, for want of jurisdiction. Thereafter the claim was referred to the court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, April 27, 1904.

No other competent evidence is adduced respecting the delay in the presentation and prosecution of the claim.

BY THE COURT.

Filed February 17, 1908
A true copy
Test this 18th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 285.

TRUSTEES OF FREDERICK PRESBYTERIAN CHURCH, OF FREDERICK, MD.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE FREDERICK PRESBYTERIAN CHURCH, OF FREDERICK, MD., AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13073. Trustees of the Frederick Presbyterian Church, of Frederick, Md., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"A BILL For the relief of the trustees of the Frederick Presbyterian Church, of Frederick, Maryland.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Frederick Presbyterian Church, of Frederick, Maryland, the sum of one thousand dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The court, upon the evidence and report of the Treasury Department and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and a resident of Camden, N. J., and is the widow of Edward R. Dodge, deceased, who served as surgeon on the receiving ship *New Hampshire* from December 1, 1869, to June 13, 1870.

II. For said service he has been paid the shore pay and allowances of his grade, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he has received, and sea pay and allowances, which claimant alleges she would have been entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of the same.

III. It further appears that during the time claimant's decedent was attached to said receiving ship as aforesaid he was required to have his quarters and to mess on board said vessel, to wear his uniform, and was not permitted to live with his family.

IV. The difference between the sea pay and allowances of a surgeon in the United States Navy from December 1, 1869, to June 13, 1870, and the amount which said decedent received for his service during that period, is one hundred and forty-seven dollars and eighty-one cents ($147.81), no part of which has been paid.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 12th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 275.

HEIRS OF JOHN C. CARTER.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF CHARLES E. CARTER, ELIZABETH CRAWFORD BRONSON, AND LAWRENCE C. CRAWFORD, HEIRS AT LAW OF JOHN C. CARTER, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 13, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13093-4. Charles E. Carter, Elizabeth Crawford Bronson, and Lawrence C. Crawford, heirs at law of John C. Carter, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimants' decedent was serving as an officer in the Navy of the United States upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 10th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimants, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants in their petition make substantially the following allegations:

That John C. Carter served as a commander in the United States Navy on the receiving ship *Vermont*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances, to which claimants are entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay, amounting to $372.91, is due to claimants, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimants are citizens of the United States and residents of Washington, D. C., and the State of New York, and claimants' decedent is the identical person who served as commander on the receiving ship *Vermont* from November 23, 1864, to June 30, 1865.

For said services claimants' decedent was paid the shore pay and allowances of a commander, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which claimants' decedent did receive, and sea pay and allowances which claimants claim to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

II. During the time claimants' decedent was attached to said receiving ship as aforesaid he had or was required to have his quarters and to mess on board said vessel, and was required to wear his uniform, and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of a commander from November 23, 1864, to June 30, 1865, and the amount which claimants' decedent received for his service during that period is three hundred and seventy-two dollars and ninety-one cents ($372.91), no part of which has been paid.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 12th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 276.

WILLIAM H. BACON AND ANNIE M. SMITH.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF WILLIAM H. BACON AND ANNIE M. SMITH, HEIRS AT LAW OF FRANCIS H. BACON, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 13, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 10942—C. & F. 191. William H. Bacon and Annie M. Smith, heirs at law of Francis H. Bacon, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimants' decedent, Francis H. Bacon, was serving as an officer in the Navy of the United States, to wit, an acting ensign upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring Senate bill 5949 for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 10th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants, in their petition, make substantially the following allegations:

This claim was previously presented to the proper accounting officers of the Treasury Department for settlement, and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being $186.22. This action was reported to Congress by the Secretary of the Treasury in House

Executive Document No. 144, Fifty first Congress, first session. In appropriating for said allowance (and others of like character) Congress made the following proviso:

"That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the filing of the petition in the Court of Claims upon which the judgment was rendered, which, being affirmed by the Supreme Court, has been adopted by the accounting officers as the basis for the allowance of said claim."

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay as the same had been settled under the said decision in United States against Strong, and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong *v.* The United States was filed in the Court of Claims. Upon such readjustment there was found to be due and then paid to claimant out of said appropriation the sum of nothing, being the amount which accrued subsequent to July 16, 1880, and to which said proviso did not relate.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which claimant would have been entitled under the decision in the United States against Strong had Congress not prohibited the payment of the same was $186.22.

Subsequent appropriation statutes have contained the said proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department and after full consideration, makes the following

FINDING OF FACTS.

Claimants are citizens of the United States, and claimants' decedent was an officer in the Navy thereof, and are residents of the States of New York and New Jersey, and claimants' decedent is the identical person whose claim under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

The amount found due claimants' decedent by the accounting officers under said decision was $186.22; the amount suspended under the proviso to the act of Congress approved September 30, 1890, and which still remains unpaid, is one hundred and eighty-six dollars and twenty-two cents ($186.22).

By the Court.

Filed February 10, 1908.
A true copy.
Test this 12th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 280.

WILLIAM O. ROBARDS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF WILLIAM O. ROBARDS AGAINST THE UNITED STATES.

FEBRUARY 17, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 14, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11511. William O. Robards v. The United States.]

STATEMENT OF CASE.

On April 26, 1904, by resolution of the United States Senate, there was referred to this court Senate bill No. 4447, Fifty-eighth Congress, for findings of fact under the terms of the act approved March 3, 1887, which said bill reads as follows:

"A BILL For the relief of Doctor William O. Robards.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to Doctor William O. Robards, of Boyle County, Kentucky, the sum of four thousand five hundred and eighty-five dollars, in full compensation for stores and supplies and services taken for the use of and used by the Federal forces during the late civil war."

The claimant in his petition makes the following allegations:

That he is a citizen of the United States, now residing in the county of Henderson, State of North Carolina; that during the late civil war he was a citizen of the United States, residing in the county of Boyle, State of Kentucky; that during said war Col. Speed S. Fry, Fourth Kentucky Infantry, U. S. Army, camped at petitioner's premises and left with petitioner, who was then a practicing physician, a large number of his soldiers, who were ill; that petitioner cared for said soldiers as a physician and

The said trustees of said church appeared in this court April 30, 1907, and filed their petition, in which it is substantially averred—

That during the late civil war the military authorities of the United States took possession of the building and grounds of the Frederick Presbyterian Church, of Frederick, Md., and occupied said church as a hospital after the battle of South Mountain, in September, 1862, for a considerable period of time and greatly injured the same by said occupation; that the reasonable rental value of said property during such occupation was the sum of $900, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 11th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Presbyterian Church of Frederick, Md., as an organization was loyal to the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same for four months, and while so occupied damaged the same, for which claimant was paid $359.32. The reasonable rental value of said building during said period, exclusive of the damage so paid, was at the time and place about two hundred dollars ($200), for which latter amount no payment appears to have been made.

III. The claim herein for rent was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case. No satisfactory evidence is adduced showing why the claim was not earlier presented.

BY THE COURT.

Filed February 17, 1908.

A true copy.

Test this 18th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 286.

TRUSTEES OF BAPTIST CHURCH OF DARDANELLE, ARK.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF DARDANELLE BAPTIST CHURCH AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Trustees of Dardanelle Baptist Church v. The United States. Congressional, No. 13320.]

STATEMENT OF CASE.

This is a claim for damage to a church building resulting from the occupation of the same by the military forces of the United States during the late civil war.

On the 2d day of March, 1907, the United States Senate referred to the court a bill designed to confer authority upon the Secretary of War to adjust the claim. The claimants appeared in this court, filed their petition, and the case was brought to a hearing, but was on February 3, 1908, dismissed for the reason that the Senate bill was not framed in accordance with the statute and did not give the court jurisdiction.

On February 12, 1908, the United States Senate referred to the court another bill in the following words:

"[S. 5025, Sixtieth Congress, first session.]

"A BILL For the relief of the Baptist Church of Dardanelle, Arkansas.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to the trustees of the Baptist Church of Dardanelle, Arkansas, the sum of three thousand dollars, in full compensation for use, occupation, and destruction of said church by the Federal forces during the late civil war."

The claimants appeared in this court on February 13, 1908, and filed their petition, in which it is substantially averred:

That during the winter of 1864 and 1865 the military forces of the United States took possession of the church building of the Dardanelle Baptist Church, of Dardanelle, Ark., and removed therefrom the furniture, fixtures, ceiling, weatherboarding, and flooring, using said material for military purposes, and so weakened said building that it soon afterwards fell down; that said building, furniture, and fixtures at the time they were taken and appropriated to the use of the Army were reasonably worth the sum of two thousand dollars ($2,000), for which no payment has been made; that said Dardanelle Baptist Church, as a church, was loyal to the Government of the United States throughout said war.

The case was brought to a hearing on loyalty and merits on the 13th day of February, 1908.

Bynum E. Hinton, esq., appeared for the claimants, and the Attorney-General, by Clark McKercher, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the arguments and briefs of counsel on each side, makes the following

FINDINGS OF FACT.

I. The Baptist Church of Dardanelle, Ark., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used the furniture and fixtures therein contained, together with the weatherboarding and flooring thereof, in the construction of breastworks and for firewood, and otherwise so damaged the building that it soon thereafter fell down. The reasonable value of such furniture, fixtures, and building so destroyed was, at the time and place, the sum of one thousand one hundred and ninety dollars ($1,190), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and first reference to this court March 2, 1907, by resolution of the United States Senate, under which reference the court on February 3, 1908, found that the bill referring the same was not framed in accordance with the statute and did not give the court jurisdiction. Thereafter on February 12, 1908, the claim was again referred to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not presented earlier.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 18th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 287.

TRUSTEES OF MOUNTAIN CREEK BAPTIST CHURCH, OF HAMILTON COUNTY, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF MOUNTAIN CREEK BAPTIST CHURCH, OF HAMILTON COUNTY, TENN., AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12522. Trustees of Mountain Creek Baptist Church, of Hamilton County, Tenn., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for the value of a church building which was torn down and the materials therefrom used by the United States troops during the war for the suppression of the rebellion. The following bill was referred to this court on June 13, 1906, by resolution of the United States Senate under the act of Congress, approved March 3, 1887, known as the Tucker Act:

"[S. 5678, Fifty-ninth Congress, first session.]

"A BILL For the relief of the Mountain Creek Baptist Church, of Hamilton County, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, directed to pay, out of any money in the Treasury not otherwise appropriated, to the Mountain Creek Baptist Church, of Hamilton County, Tennessee, the sum of one thousand dollars, in full compensation for the use of the church by the United States Army during the late civil war."

The trustees of said church appeared and filed their petition in this court on August 27, 1906, in which they make the following allegations:

That during the civil war said church organization remained loyal to the Government of the United States; that on or about the month of August, 1863, its church

building and premises were taken possession of by military forces of the United States and the building was converted into a military prison, and after being used for this purpose and greatly damaged thereby the building was entirely destroyed and the materials therefrom used by said military forces for building quarters and other military purposes.

That said building was then and there worth the sum of $1,000, and the use and occupation thereof the sum of $100; that the United States has never paid any compensation for the use or destruction of said building and has not replaced or repaired the same.

The case was brought to a hearing on the 3d day of February, 1908.

William E. Richardson, esq., appeared for the claimants, and the Attorney-General, by Clark McKercher, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Mountain Creek Baptist Church, of Hamilton County, Tenn., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition, to wit, in August, 1863, and used and destroyed the same. The reasonable compensation for such use and destruction was then and there the sum of five hundred dollars ($500), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore mentioned, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

By the Court.

Filed February 10, 1908.
A true copy.
Test this 18th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 288.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, OF UPPERVILLE, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF UPPERVILLE, VA., AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12987. Trustees of the Methodist Episcopal Church South, of Upperville, Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 6892, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Upperville, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Upperville, Virginia, the sum of one thousand five hundred dollars, for use of and damage to their church property by the military forces of the United States during the late civil war."

The claimants appeared in this Court on the 25th day of March, 1907, and filed their petition in which it is substantially averred:

That in the spring of 1862 the military forces of the United States, under command of General Geary, took possession of the church building of the Methodist Episcopal Church South, of Upperville, Va., and used and occupied the auditorium room for

quarters for the troops and the basement of the building for a stable. That during said occupancy the floors, pews, pulpit, furniture, windows, doors, etc., were destroyed, and the cost to restore the building to the condition in which it was at the time the said military forces took possession was the sum of $1,500, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants and the Attorney-General, by Clark McKercher, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Upperville, Va., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of said church building described in the petition, and used and occupied the same for military purposes, and damaged the same. The reasonable rental value of such use and occupation, together with the damages thereto in excess of ordinary wear and tear, was then and there the sum of two hundred and ten dollars ($210), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned in the statement of the case.

No satisfactory evidence is adduced showing why the claim was not presented earlier.

By the Court.

Filed February 17, 1908.

A true copy.

Test this 18th day of February, 1908.

[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 289.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, OF PARIS, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF PARIS, VA., AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12970. Trustees of the Methodist Episcopal Church South, of Paris, Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

" [S. 6764, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Paris, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Paris, Virginia, the sum of one thousand dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said trustees of this church appeared in this court on April 30, 1907, and filed their petition, in which it is substantially averred—

That during the late civil war the military authorities of the United States occupied the church property of the Methodist Episcopal Church South, of Paris, Va., for

camping and other purposes and used the same as a hospital for the wounded for some time; that many brick were taken out of the wall during said occupation, so that the building finally fell down and became a total loss; that the reasonable rental value of said property during said occupation, including the repairs necessary to restore said property to the same condition as before such occupation was the sum of $1,000, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing in loyalty and merits on the 10th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, esq., appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Paris, Va., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition, and used and occupied the same as a hospital and damaged the same. The reasonable rental value of such use and occupation, together with the damages in excess of ordinary wear and tear, was then and there the sum of two hundred dollars ($200), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned in the statement of the case. No satisfactory evidence is adduced showing why the claim was not presented earlier.

By the Court.

Filed February 17, 1908.

A true copy.

Tested this 18th day of February, 1908.

[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 290.

MOYLAN C. FOX, EXECUTOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF MOYLAN C. FOX, EXECUTOR OF JOAB LAWRENCE, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February , 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11474. Moylan C. Fox, executor of estate of Joab Lawrence, deceased, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for services and use of the steamer *Illinois* by the military forces of the United States during the war for the suppression of the rebellion. On the 26th day of April, 1904, the United States Senate referred to the court a bill in the following words:

"[S. 4908, Fifty-eighth Congress, second session.]

"A BILL For the relief of Joab Lawrence.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to investigate, audit, adjust, and settle the claim or claims of Joab Lawrence, of the State of Missouri, for the difference between the face value of quartermasters' vouchers issued for the use of certain steamboats during the war of the rebellion and the amount paid thereon, and a sufficient sum to pay the amount thus found due is hereby appropriated out of any money in the Treasury not otherwise appropriated."

The trustee of the estate of Joab Lawrence, deceased, appeared in this court April 2, 1906, and filed his petition, in which it is substantially averred:

That the said trustee, Moylan C. Fox, of the estate of the late Joab Lawrence, deceased, resides at Salt Lake City, Utah; that the decedent always bore true allegiance to the United States; that decedent during the war for the suppression of the

rebellion was the owner of the steamer *Illinois*, which was employed in the service of the United States from the 30th day of May, at 6 o'clock a. m., to the 30th day of June, 1863, at 12 p. m., and from the 1st day of July to the 31st day of July, 1863; that there was issued to the said Joab Lawrence by Henry S. Clubb, captain and assistant quartermaster, and by G. L. Fort, captain and assistant quartermaster, separate vouchers for the rental of said vessel at the rate of $250 per day, to wit, in the sum of $7,937.50 and $7,750; thereafter the said vouchers were changed and altered by L. S. Metcalf, captain and quartermaster, from $7,937.50 to $5,873.75, and from $7,750 to $5,735; that the amount now due his estate on said vouchers is $4,078.75.

Howry, J., was not present when this case was argued and took no part in the decision thereof.

The case was brought to a hearing on loyalty and merits on the 6th day of February, 1908.

L. A. Pradt, of counsel for Pennebaker & Jones, appeared for the claimant, and the Attorney-General, by Clark McKercher, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Claimant's decedent, Joab Lawrence, was loyal to the Government of the United States throughout the late civil war.

II. During the late civil war there was an agreement entered into between Capt. Henry S. Clubb, assistant quartermaster, United States Army, and Joab Lawrence, whereby the steamboat *Illinois*, owned by said Lawrence, was chartered at the price of $250 per day, and said vessel was used for a period of 62 days and 18 hours, for the use of which two vouchers were made out in accordance with said agreement, the first for $7,937.50 and the other for $7,750, which vouchers were submitted to Brig. Gen. R. Allen, chief quartermaster of the department wherein said vessels were chartered, and he reduced the first voucher to $5,873.75 and the second voucher to $5,735, and as thus reduced approved said vouchers, thereby changing the compensation for said vessel from $250 a day to $185 a day. The vouchers so reduced, amounting in the aggregate to $11,608.75, were paid to said Joab Lawrence, for which he gave his receipt in full without objection or protest, leaving a difference between the amount of said two vouchers as originally made out and the amount so paid of $4,078.75.

III. There is no evidence tending to show for what reason the payment made was less than the amount which appears from the vouchers originally to have been agreed upon, other than as written thereon; that said vouchers were issued subject to the approval of General Allen or Colonel Parsons and were approved as reduced by said General Allen, as aforesaid.

IV. The claim was never presented by claimant's decedent in his lifetime to this court under the general jurisdiction, nor was said claim presented by anyone to any department of the Government until its presentation to Congress and reference to this court, as hereinbefore set forth, and no satisfactory evidence is given showing why said claim was not earlier prosecuted.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 18th day of February, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 291.

FIRST CHRISTIAN CHURCH OF MEXICO, MO.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE FIRST CHRISTIAN CHURCH OF MEXICO, MO., AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 18159. First Christian Church of Mexico, Mo., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 3592, Fifty-ninth Congress, second session.]

"A BILL For the relief of the First Christian Church of Mexico, Missouri, a corporation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the treasurer of the First Christian Church of Mexico, Missouri, a corporation, the sum of one thousand five hundred dollars, in full compensation for the occupation, use, and incidental injury to the property of said church by United States military forces during the civil war.

The trustees of said church appeared in this court March 25, 1907, and filed their petition in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the property of the First Christian Church of Mexico, Mo., consisting

of a large well constructed church building, about 80 feet by 65 feet in size, and occupied the same for a long period, and the property thereby greatly injured. That a claim was presented in the Quartermaster-General's Office, and a claim subsequently sent to a Member of Congress representing the said district, but allowance or payment was never made; that the reasonable rental value of such property during such occupation, including the repairs necessary to restore said property to the same condition in which it was before such occupation, was the sum of $1,500, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

Coldren & Fenning appeared for the claimant, and the Attorney-General, by W. H. Lamar, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The First Christian Church of Mexico, Mo., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of said church building described in the petition, and used and occupied the same for military purposes, and damaged the same. The reasonable rental value thereof, together with damage thereto in excess of ordinary wear and tear, was then and there the sum of five hundred and fifty dollars ($550), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not presented earlier.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 18th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 292.

DEACONS OF MISSIONARY BAPTIST CHURCH OF POWDER SPRINGS, GA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF DEACONS OF THE MISSIONARY BAPTIST CHURCH AT POWDER SPRINGS, GA., AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12460. Deacons of the Missionary Baptist Church at Powder Springs, Ga., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for a church alleged to have been torn down and the material used by the United States Army during the late civil war for the purpose of constructing barracks for the troops. On the 13th day of June, 1906, the Senate of the United States by resolution referred to the court under the act of March 3, 1887, commonly known as the Tucker Act, a bill as follows:

"[S. 3561, Fifty-ninth Congress, first session.]

"A BILL For the relief of the trustees of the Missionary Baptist Church at Powder Springs, Georgia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the sum of nine hundred dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be paid to the trustees of the Missionary Baptist Church at Powder Springs, Georgia, for the destruction of said church and for the use of the materials of said church by the Army of the United States during the civil war."

The claimant appeared and filed his petition on the 26th day of January, 1907, in which he made substantially the following allegations:

That the Missionary Baptist Church at Powder Springs, Ga., as an organization, was loyal to the United States throughout the civil war; that in the month of October, 1864, and prior thereto, the title to the Missionary Baptist Church at Powder

Springs, Ga., was held by the deacons of said church for the benefit of the congregation thereof; that said church was a frame building about 40 feet wide and 60 feet long, well finished on the interior and with good wooden seats, and was of the reasonable value of $900; that in the month of October, in the year 1864, Union troops, under the immediate command of Major Platt, tore down said church building and used the materials thereof for the construction of shanties for the use or protection of the Union Army, and that by reason of said destruction the said church was deprived of a house of worship for eight or ten years, and that the necessities are now great for a suitable house of worship.

The case was brought to a hearing on loyalty and merits on the 12th day of February, 1908.

Charles W. Clagett, esq., appeared for the claimant, and the Attorney-General, by Clark McKercher, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Missionary Baptist Church at Powder Springs, Ga., as a church was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, for the use of the Army, by proper authority, took possession of the church building described in the petition and tore down the same and used the materials thereof in the construction of quarters for troops. The reasonable value of the building so destroyed was, at the time and place, the sum of six hundred and fifty dollars ($650), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not earlier presented.

By the Court.

Filed February 17, 1908.
A true copy.
Test this 17th day of February, A. D. 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 293.

LUCY A. DIBBLE, ADMINISTRATRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF LUCY A. DIBBLE, ADMINISTRATRIX OF SYLVESTER DIBBLE, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11396. Lucy A. Dibble, administratix of estate of Sylvester Dibble, deceased, *v.* The United States.]

STATEMENT OF CASE.

On April 26, 1904, Senate bill No. 3877, Fifty-eighth Congress, was referred to this court by resolution of the United States Senate for findings of fact under the terms of the act approved March 3, 1887. Said bill reads as follows:

"A BILL For the relief of Sylvester Dibble.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Sylvester Dibble, of Beaufort County, North Carolina, the sum of one thousand two hundred and fifty dollars, in full compensation for stores and supplies taken from him and used by the military forces of the United States during the war of the rebellion."

The claimant in her petition makes the following allegations:

That she is a citizen of the United States and a resident of the county of Beaufort, State of North Carolina; that she is the duly appointed, qualified, and acting administratrix of the estate of Sylvester Dibble, deceased, late of said county and State.

That during the late civil war said Sylvester Dibble, a person of color, was a citizen of the United States, residing in said county and State; that after the close of hostilities in said war, and after the surrender of Gen. Robert E. Lee, of the Confederate

army, the military forces of the United States, under command of General Stoneman, took from said Sylvester Dibble and converted to the use of the Army commissary supplies of the kinds and values below stated, to wit:

10 boxes of tobacco, 1,000 pounds	$1,000
200 pounds smoking tobacco	250
3,000 cigars	300
Total	1,550

The case was brought to a hearing upon loyalty and merits on the 14th day of January, 1908.

Moyers & Consaul appeared for the claimant, and the Attorney-General, by M. A. Coles, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Sylvester Dibble, deceased, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took from the claimant's decedent in Beaufort County, N. C., property of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of seven hundred and five dollars ($705), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy except that claimant's decedent stated that soon after the taking of the property he made inquiries and was informed that he could not prosecute a claim against the Government owing to his having been a slave during the war; that he was subsequently advised that his claim might be presented for collection, and that it was placed in the hands of an attorney for collection some years after the close of the war. Thereafter the same was presented to Congress and later referred to this court, as before stated, by resolution of the Senate.

By the Court.

Filed February 3, 1908.
A true copy.
Test this 17th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 294.

CALEDONIA LODGE, NO. 4, INDEPENDENT ORDER OF ODD FELLOWS, OF SHEPHERDSTOWN, W. VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF CALEDONIA LODGE, No. 4, INDEPENDENT ORDER OF ODD FELLOWS, OF SHEPHERDSTOWN, W. VA., AGAINST THE UNITED STATES.

FEBRUARY 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 18, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12960. Caledonia Lodge, No. 4, Independent Order of Odd Fellows, of Shepherdstown, W. Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 6643, Fifty-ninth Congress, second session.]

"A BILL For the relief of Caledonia Lodge, Numbered Four, Independent Order of Odd Fellows, of Shepherdstown, West Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any moneys in the Treasury not otherwise appropriated, to the treasurer of Caledonia Lodge, Numbered Four, Independent Order of Odd Fellows, for the benefit of said lodge, the sum of one thousand two

hundred dollars, in full compensation for the occupation, use, and incidental injury to the property of said lodge by United States military forces during the civil war."

The said lodge appeared in this court April 30, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the property of the Caledonia Lodge, No. 4, Independent Order of Odd Fellows, of Shepherdstown, W. Va., and occupied the same as a hospital for a considerable period after the battle of Antietam and occupied it several times thereafter until the close of the war, and that the said building and the property of the said lodge were greatly injured thereby; that the reasonable rental value of said property during said occupation, including the repairs necessary to restore said property to the same condition as before such occupation, was the sum of $1,200, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 10th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Caledonia Lodge, No. 4, Independent Order of Odd Fellows, of Shepherdstown, W. Va., as an organization was loyal to the Government of the United States.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took possession of the lodge room described in the petition and used the same as a guard room and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was then and there the sum of one hundred and fifteen dollars ($115), no part of which appears to have been paid.

III. The claim herein was never presented to any department or officer of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced why the claim was not earlier presented.

BY THE COURT.

Filed February 17, 1908.

A true copy.

Test this 18th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 295.

LANDS IN OKLAHOMA WITHDRAWN FOR TIMBER RESERVE.

Mr. OWEN presented the following

RESOLUTION OF THE LEGISLATURE OF OKLAHOMA AS TO CERTAIN CHOCTAW LANDS WITHDRAWN FROM ALLOTMENT FOR A TIMBER RESERVE.

FEBRUARY 19, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

SENATE CONCURRENT RESOLUTION NO. 6.

Whereas Hon. E. A. Hitchcock, late Secretary of the Interior, made an order segregating or withholding from allotment certain numbers of townships, located in McCurtain, Pushmataha, Latimer, and Le Flore counties, in the State of Oklahoma, for the purpose of creating a timber and game reserve. That said land embraced in said townships constitutes some of the best agricultural lands in said counties, and said withdrawal for the purpose heretofore stated will work untold injury to the people of said counties. In many instances farms and permanent homes have been built in this segregated district, which will, if carried into effect, deprive these residents and citizens of their accumulation of a lifetime and force them to give up their homes and seek places elsewhere.

Whereas the best agricultural land beyond the limits of said proposed reservation has been allotted, and to force these settlers at this time to relinquish their homes and seek other allotments would force them to take inferior lands, to their great injury and injustice: Therefore be it

Resolved by the first senate of Oklahoma (the house of representatives concurring therein), That the Congress of the United States be memorialized to assist in securing a revocation of said order of the late Secretary of the Interior, and the United States Senators, T. P. Gore and Robert L. Owen, and all Members of Congress from the State of Oklahoma are hereby instructed to use all honorable means at their command to secure the above revocation.

Be it further resolved, That a copy of this memorial be sent to the Hon. James R. Garfield, Secretary of the Interior, and to the Oklahoma Senators and Representatives in Congress.

STATE OF OKLAHOMA, *Secretary's Office.*

I, Bill Cross, secretary of state of the State of Oklahoma, do hereby certify that the above and foregoing senate concurrent resolution No. 6, is a full, true, and correct copy of the original senate concurrent resolution No. 6, as passed by the legislature, and now on file in the office of the secretary of state.

Witness my hand and the great seal of the State of Oklahoma.

Done at the city of Guthrie, this —— day of February, A.D. 1908.

[SEAL.] BILL CROSS, *Secretary of State.*

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 299.

HEIRS OF DANIEL W. SAMPSON.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF GEORGE H. SAMPSON ET AL., HEIRS AT LAW OF DANIEL W. SAMPSON, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 20, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims of the United States. Congressional, No. 13321. George H. Sampson, Leander P. Sampson, Ellias S. Willis, Henry P. Willis, James M. Willis, jr., and Maria J. Akin, heirs at law of Daniel W. Sampson, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimants' decedent was serving as an officer in the United States Navy, upon receiving ships belonging to the Navy, was transmitted to the court by Senate resolution on the 12th day of February, 1908, referring Senate bill No. 5177 for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimants, and the Attorney-General, by John Q. Thompson, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants in their petition make substantially the following allegations:

That they are the heirs at law of Daniel W. Sampson, deceased, who served in his lifetime as mate, United States Navy, on the receiving ship *Ohio*, and that during that period of such service he received shore-duty pay and allowance instead of sea pay and allowances, to which he was entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay for decedent's service on receiving ship aforesaid is $936.68, and that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. That the claimants are citizens of the United States and residents of the States of New York, Massachusetts, and Oregon, and are the heirs at law of Daniel W. Sampson, deceased, who served as mate on the receiving ship *Ohio* from March 9, 1870, to April 23, 1873.

II. For said service said decedent has been paid the shore pay and allowances of his grade, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he has received, and sea pay and allowances, which claimants allege he would have been entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

III. It further appears that during the time claimants' decedent was attached to said receiving ship as aforesaid he was required to have his quarters and to mess on board said vessel, to wear his uniform, and was not permitted to live with his family.

IV. The difference between the sea pay and allowances of a mate in the United States Navy for the period from March 9, 1870, to April 23, 1873, and the amount which said decedent received for his services during that period, is nine hundred and thirty-six dollars and sixty-eight cents ($936.68), no part of which has been paid.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 19th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 300.

EMMA M. GAY, EXECUTRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF EMMA M. GAY, WIDOW AND EXECUTRIX OF THOMAS S. GAY, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE.
Washington, February 20, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, No. 10942—C. and F. 172. Emma M. Gay, widow and executrix of Thomas S. Gay, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay whilst claimant's decedent, Thomas S. Gay, was serving as an officer in the Navy of the United States, to wit, an acting ensign on the receiving ship *Vandalia* was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring Senate bill 5949, for proceedings and report, under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes substantially the following allegations:

This claim was previously presented to the proper accounting officers of the Treasury Department for settlement, and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being $477.65. This action was reported to Congress by the Secretary of the Treasury in Senate Executive Document No. 211, Fifty-first Congress, first session. In appro-

priating for said allowance (and others of like character) Congress made the following proviso:

"That no part of any one of the claims to which the appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the filing of the petition in the Court of Claims upon which the judgment was rendered, which, being affirmed by the Supreme Court, has been adopted by the accounting officers as the basis for the allowance of said claim."

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay as the same has been settled under the said decision in United States against Strong, and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong *v.* The United States was filed in the Court of Claims.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which claimant's decedent would have been entitled under the decision in the United States against Strong had Congress not prohibited the payment of the same was $477.65.

Subsequent appropriation statutes have contained the said proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department, and after full consideration, makes the following

FINDINGS OF FACT.

Claimant is a citizen of the United States and a resident of the State of New Hampshire, and claimant's decedent was an officer in the Navy thereof and the identical person whose claim under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

Amount found due claimant by the accounting officers under said decision was $477.65; the amount suspended under the proviso to the act of Congress approved September 30, 1890, and which still remains unpaid, is four hundred and seventy-seven dollars and sixty-five cents ($477.65).

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 19th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 301.

CHARLES A. AND ISABELLE G. WHITE.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF CHARLES A. WHITE AND ISABELLE G. WHITE, SOLE HEIRS AT LAW OF LEVERETT H. WHITE, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 20, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, No. 10942—C. and F. 196, Charles A. White and Isabelle G. White, sole heirs at law of Leverett H. White, deceased, *v.* the United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimants' decedent, Leverett H. White, was serving as an officer in the Navy of the United States, to wit, an acting ensign upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring Senate bill 5949, for proceedings and report, under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimants and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants, in their petition, make substantially the following allegations:

This claim was previously presented to the proper accounting officers of the Treasury Department for settlement and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being $250.87. This action was reported to Congress by the Secretary of the Treasury in Senate

Executive Document No. 211 Fifty-first Congress, first session. In appropriating for said allowance (and others of like character) Congress made the following proviso:

"That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the filing of the petition in the Court of Claims upon which the judgment was rendered, which, being affirmed by the Supreme Court, has been adopted by the accounting officers as the basis for the allowance of said claim."

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay as the same had been settled under the said decision in United States against Strong, and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong *v.* The United States was filed in the Court of Claims. Upon such readjustment there was found to be due and then paid to claimant out of said appropriation the sum of nothing, being the amount which accrued subsequent to July 16, 1880, and to which said proviso did not relate.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which claimant would have been entitled under the decision in the United States against Strong had Congress not prohibited the payment of the same $520.87.

Subsequent appropriation statutes have contained the said proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department, and after full consideration, makes the following

FINDING OF FACTS.

Claimants are citizens of the United States and are residents of New York and New Jersey, respectively, and are the sole heirs of Leverett H. White, whose claims under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656) were adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

The amount found due claimant by the accounting officers under said decision was $250.87; the amount suspended under the proviso to the act of Congress approved September 30, 1890, and which still remains unpaid, is two hundred and fifty dollars and eighty-seven cents ($250.87).

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 19th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 302.

MARIE L. CLARK.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF MARIE L. CLARK, WIDOW OF LEWIS CLARK, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 20, 1908.

Sir: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims of the United States. Congressional, No. 13093-5. Marie L. Clark, widow of Lewis Clark, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's decedent was serving as an officer in the United States Navy, upon receiving ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801 for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interest of the United States.

The claimant in her petition makes substantially the following allegations:

That she is the widow of Lewis Clark, deceased, who served in his lifetime as lieutenant-commander, U. S. Navy, on the receiving ship *Ohio*, and that during the period of such service he received shore duty pay and allowances, instead of sea pay and allowances, to which he was entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay for decedent's service on receiving ship aforesaid is $195.06 and that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT

I. The claimant is a citizen of the United States and a resident of Richfield Springs, N. Y., and is the widow of Lewis Clark, deceased, who served as lieutenant-commander, U. S. Navy, on the receiving ship *Ohio* from December 31, 1868, to May 13, 1869.

II. For said service he has been paid the shore pay and allowances of his grade, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances which he has received and sea pay and allowances which claimant alleges he would have been entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

III. It appears that during the time claimant's decedent was attached to said receiving ship as aforesaid he had or was required to have his quarters and to mess on board said vessel; that he was required to wear his uniform, and was not permitted by the rules of the service to live with his family.

IV. The difference between the sea pay and allowances of a lieutenant-commander, U. S. Navy, from December 31, 1868, to May 13, 1869, and the amount which said decedent received for his service during that period, is one hundred and ninety-ve dollars and six cents ($195.06), no part of which has been paid.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 19th day of February.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 303.

HEIRS OF SILAS REYNOLDS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ALICE C. McRITCHIE ET AL., HEIRS AT LAW OF SILAS REYNOLDS, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 20, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES. W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, 13093-10. Alice C. McRitchie, Waring F. Reynolds, Clarence A. Reynolds, Henry S. Reynolds, C. Russell Reynolds, Virginia J. Reynolds, Frank H. Reynolds Vernon T. Reynolds, Fannie W. Reynolds, sole heirs at law of Silas Reynolds, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimants' decedent was serving as an officer in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimants, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants in their petition make substantially the following allegations:

That Silas Reynolds served as an acting master in the United States Navy on the receiving ships *Allegheny* and *Princeton*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances to which he was entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay amounting to $748.68 is due to claimants, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimants are citizens of the United States and residents of the States of Virginia, Maryland, and the District of Columbia, and claimants' decedent is the identical person who served as acting master on the receiving ship *Allegheny* from the 28th day of May, 1864, to 10th day of July, 1864, and from July 20, 1864, to June 30, 1865, and on the receiving ship *Princeton* from the 9th day of November, 1863, to 26th day of May, 1864.

For said service claimants' decedent has been paid the shore pay and allowances of an acting master, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances which he received and sea pay and allowances which claimants claim to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

II. During the time claimants' decedent was attached to said receiving ships as aforesaid he had and was required to have his quarters and to mess on board said vessel, and was required to wear his uniform and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of an acting master for the period above stated, and the amount which claimants' decedent has received for his service during that period is seven hundred and forty-eight dollars and sixty-eight cents ($748.68), no part of which has been paid.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 19th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 304.

E. RITTENHOUSE MILLER, EXECUTOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF E. RITTENHOUSE MILLER, EXECUTOR OF DICKENSON MILLER, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 20, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours, JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, 13093-13. E. Rittenhouse Miller, executor of J. Dickenson Miller, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while J. Dickenson Miller was serving as an officer in the Navy of the United States upon receiving ships belonging to the Navy was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801 for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 12th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes substantially the following allegations:

That his testator served as a surgeon in the United States Navy on the receiving ship *Princeton*, and as a surgeon and medical director in the United States Navy on the receiving ship *Potomac*, and during the periods of such service he received shore pay and allowances instead of sea pay and allowances to which he is entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay amounting to $1,852.33 is due to claimant, but the payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and a resident of Pennsylvania, and is the duly appointed executor of the estate of J. Dickenson Miller, who served as a surgeon on the receiving ship *Princeton* from September 26, 1864, to May 31, 1866, and as a surgeon and medical director on the receiving ship *Potomac* from July 1, 1869, to December 10, 1872.

For said service claimant's testator was paid the shore pay and allowances of his ranks, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances which he received and sea pay and allowances which is claimed under the decision of the Supreme Court in the case United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

II. It appears that during the time said officer was attached to said receiving ship, as aforesaid, he had and was required to have his quarters and to mess on board said vessels, and that he was required to wear his uniform and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of a surgeon from September 26, 1864, to May 31, 1866, and of a surgeon and medical director from July 1, 1869, to December 10, 1872, and the amount which such officer received for his service during said periods is eighteen hundred fifty-two dollars and thirty-three cents ($1,852.33), no part of which has been paid.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 19th February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 305.

ELIZABETH M. PITKIN AND CARRIE PITKIN McDOWELL.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ELIZABETH M. PITKIN AND CARRIE PITKIN McDOWELL, HEIRS OF HENRY S. PITKIN, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 20, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, 13093-14. Elizabeth M. Pitkin and Carrie Pitkin McDowell, heirs of Henry S. Pitkin, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimants' decedent was serving as an officer in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimants, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interest of the United States.

The claimants in their petition make substantially the following allegations:

That Henry S. Pitkin served as an assistant surgeon in the United States Navy on the receiving ships *North Carolina* and *Vermont*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances to which he was entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay, amounting to $382.21, is due to claimants, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimants are citizens of the United States and residents of the State of New York, and claimants' decedent is the identical person who served as an assistant surgeon on the receiving ship *North Carolina* from August 12, 1862, to February 25, 1863, and on the receiving ship *Vermont* from January 14, 1871, to October 10, 1871.

For said service claimants' decedent has been paid the shore pay and allowances of an assistant surgeon, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he received, and sea pay and allowances, which claimants claim to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

II. During the time claimants' decedent was attached to said receiving ships as aforesaid he had and was required to have his quarters and to mess on board said vessel, and was required to wear his uniform and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of an assistant surgeon for the periods from August 12, 1862, to February 25, 1863, and from January 14, 1871, to October 10, 1871, and the amount which claimants' decedent has received for his service during that period is three hundred and eighty-two dollars and twenty-one cents ($382.21), no part of which has been paid.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 19th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 306.

BUSHROD W. NASH, TRUSTEE.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF BUSHROD W. NASH, TRUSTEE OF THE UNION BAPTIST ASSOCIATION OF NORTH CAROLINA, SUCCESSOR IN INTEREST TO THE HOOD SWAMP BAPTIST CHURCH, OF WAYNE COUNTY, NORTH CAROLINA, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 19, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12502. Bushrod W. Nash, trustee of Union Baptist Association of North Carolina, successor in interest to the Hood Swamp Baptist Church, of Wayne County, N. C., *v.* The United States.]

STATEMENT OF CASE.

By Senate resolution of June 13, 1906, Senate bill No. 5743, Fifty-ninth Congress, was referred to this court for findings of fact under the terms of the act approved March 3, 1887. Said bill reads as follows:

"A BILL for the relief of the Hood Swamp Baptist Church and the Union Baptist Association.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to the Hood Swamp Baptist Church and the Union Baptist Association, of Wayne County, North Carolina, the sum of nine hundred dollars, in full compensation for stores and supplies and property appropriated and destroyed by United States authorities during the civil war."

The case was brought to a hearing upon loyalty and merits on the 22d day of October, 1907.

Moyers & Consaul appeared for claimant, and the Attorney-General, by P. M. Cox, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes the following allegations:

That he is a citizen of the United States and a resident of the county of Wayne, State of North Carolina; that petitioner is the sole trustee of the Union Baptist Association of the State of North Carolina, which association is the successor in interest to the Hood Swamp Baptist Church, of said county and State.

That during the late civil war said Hood Swamp Baptist Church, of Wayne County, N. C., was the owner of a certain house of worship situated at Hood Swamp, about 9 miles northeast of the town of Goldsboro, in said county and State; that during said war said building was in process of construction, and in March, 1865, was nearly completed; that in March, 1865, the United States military forces, under command of Gen. W. T. Sherman, under proper authority, tore down said building and converted the materials secured therefrom to the use of the Army in the construction of quarters, etc.; that at the time of the demolition of said building as aforesaid the same was reasonably worth the sum of $900.

That said Hood Swamp Baptist Church, of Wayne County, N. C., is no longer in existence as an organization, having disbanded, and that the Union Baptist Association of the State of North Carolina, is the successor in interest to said Hood Swamp Baptist Church.

The court, upon the evidence and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. During the late civil war the Hood Swamp Baptist Church, of Wayne County, N. C., as an organization, was loyal to the Government of the United States.

II. During said war said Hood Swamp Baptist Church, of Wayne County, N. C., was the owner of a certain house of worship in the process of construction, and in March, 1865, said building was nearly completed. In said month the United States military forces, under proper authority, tore down said building and converted the materials secured therefrom to army use in the construction of quarters. Said building at the time and place of its demolition and removal was reasonably worth the sum of six hundred and fifty dollars ($650).

III. It appears that the Union Baptist Association of the State of North Carolina, of which the Rev. Bushrod W. Nash, the claimant, is trustee, is the successor in interest to said Hood Swamp Baptist Church, of Wayne County, N. C., which said church is now disbanded.

IV. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court under the provisions of the Tucker Act, as hereinbefore stated, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed October 28, 1907.

A true copy.

Test this 18th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 307.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, DECATUR, ALA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF DECATUR, ALABAMA, AGAINST THE UNITED STATES.

FEBRUARY 21, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 19, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12394. Trustees of the Methodist Episcopal Church South, of Decatur, Ala., *v.* The United States.]

STATEMENT OF CASE.

By Senate resolution of June 13, 1906, Senate bill No. 6393, Fifty-ninth Congress, was referred to this court for findings of fact under the terms of the act approved March 3, 1887. Said bill, so far as concerns this claim, reads as follows:

"A BILL For relief of certain churches, Masonic lodges, and colleges in the State of Alabama, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to claimants in this act named, the several sums appropriated herein, the same being in full for and the receipt of the same to be taken and accepted in each case as a full and final release and discharge of their respective claims for use, occupation,

and damage to their buildings and grounds by United States military authorities during the civil war, namely:

* * * * * * *

"To the trustees of the Methodist Church South, of Decatur, Alabama, five thousand dollars."

* * * * * * *

The case was brought to a hearing upon loyalty and merits on the 21st day of October, 1907.

Moyers & Consaul appeared for claimant, and the Attorney-General, by S. S. Ashbaugh, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The petitioners in their petition make the following allegations:

That they are citizens of the United States and residents of the county of Morgan, State of Alabama; that they are the duly elected, qualified, and acting trustees of the Methodist Episcopal Church South, of Decatur, Ala.

That during the late civil war said Methodist Episcopal Church South, of Decatur, Ala., was the owner of certain real estate in Decatur, Ala., on which were situated three buildings, as follows, to wit:

(*a*) One substantially constructed brick church building, used as a house of worship by the white congregation of said church.

(*b*) One frame church building, used as house of worship by the colored congregation of said church.

(*c*) One frame office building used by the pastor of said church.

That during said civil war, and during the year 1864, the United States military forces, under proper authority, did tear down all of said buildings and did convert the materials secured therefrom to the use of the Army in the construction of quarters, chimneys, bake ovens, etc.; that at the time of the demolition of said buildings they were reasonably worth, in the aggregate, the sum of five thousand two hundred dollars ($5,200).

The court, upon the evidence and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. It appears from the evidence that the Methodist Episcopal Church South, of Decatur, Ala., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, destroyed property of the kind and character described in the petition. The reasonable value of said property at the time and place of destruction was the sum of eighteen hundred and fifty dollars ($1,850), no part of which appears to have been paid.

III. The foregoing claim was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as aforesaid, and no reason is given why the bar of the statute of limitations should be removed for not having resorted to any established legal remedy.

BY THE COURT.

Filed October 28, 1907
A true copy.
Test this 18th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 309.

DUMPING OF STREET SWEEPINGS AND ASHES ALONG ROCK CREEK.

LETTER FROM THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA TRANSMITTING, IN RESPONSE TO SENATE RESOLUTION OF FEBRUARY 5, 1908, A STATEMENT WITH RESPECT TO ESTIMATE FOR THE COMING FISCAL YEAR FOR SPRINKLING, SWEEPING, AND CLEANING STREETS, IN ORDER TO AVOID FURTHER DUMPING OF STREET SWEEPINGS AND ASHES ALONG THE BANKS OF ROCK CREEK.

FEBRUARY 21, 1908.—Referred to the Committee on the District of Columbia and ordered to be printed.

OFFICE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, February 20, 1908.

SIR: The Commissioners of the District of Columbia have the honor to make the following response to the resolution of the Senate dated the 5th instant, viz.:

"*Resolved*, That the Commissioners of the District of Columbia are hereby directed to inform the Senate what, if any, increase is necessary in the appropriation for the coming fiscal year for sprinkling, sweeping, and cleaning streets, in order to avoid further dumping of street sweepings and ashes along the banks of Rock Creek."

The street cleaning department has jurisdiction over but one dump along the banks of Rock Creek, and that one is located on the Washington side between the lines of Twenty-fourth and Twenty-fifth streets, if said streets were extended, a distance between 700 and 750 linear feet. At the present time and prior to November 2 last nothing but hand sweepings and unimproved street sweepings were permitted to be deposited on said dump. During the interval from November 2, 1907, to February 6, 1908, the street cleaning department carried on the ash collection service from private residences, etc., and in order to save the expense of a much longer haul ashes were also deposited on its dump. With the exception of one point in the line of Twenty-fourth street the base of the dump is distant about 15 feet from the water. To the south of this dump on the Washington side of the creek machine sweepings and alley sweepings are being deposited by the respective contractors for such work, who, it is understood, have permission from the owners of the property to make use of it for that purpose. The street cleaning department, however, has no jurisdiction in the premises, nor is there anything in the respective contracts which would enable us to take any action looking to the discontinuance of said dumping. Any other dumping that is being done along the banks of Rock Creek on either the Washington side or the Georgetown side is also presumably by permission of the owners of the abutting property.

Early ast fall the question of closing the District's dump on Rock Creek was before the Commissioners, and the engineer of bridges, to whom the matter was referred, reported that the street sweepings being deposited there by the street cleaning department could be utilized for fertilizing purposes in connection with the plans for the proposed park along that section of Rock Creek, and that the continued dumping at this point would not, therefore, be detrimental to said proposed park treatment.

In the street cleaning estimates for sprinkling, sweeping, and cleaning for the fiscal year 1909 it has been asked that the 19 cents per 1,000 square yards limitation of cost for hand cleaning be increased to 21 cents per 1,000 square yards. One cent of

this proposed increased limitation is to enable the department to reduce the hand cleaning surface area per man, and the other cent to care for the increased expense of the necessarily longer haul in the event that either or both of the department's dumps, the one on Rock Creek and the other on Connecticut avenue extended, should be closed to the District during said fiscal year.

The Connecticut avenue extended dump is being filled very rapidly, and it is seriously doubted that it will be available during the whole of the coming fiscal year. The Commissioners think, therefore, that the estimate of 1 cent per 1,000 square yards will cover the additional expense to be incurred in the longer haul necessary after July 1 next to dispose of hand sweepings now being deposited on the Rock Creek dump, if the latter is closed at that time. As set forth in the estimates, the Commissioners expect to sweep 500,000,000 square yards by hand during 1909, and the increased cost for disposing of the hand sweepings would, therefore, be $5,000. But, as already stated, this increased cost, together with the increased cost to be incurred in the proposed reduction of the hand cleaning surface area per man has been taken into account in the street cleaning department's estimates for the fiscal year 1909

During the first six months of the present fiscal year the cost of hand cleaning was 18.7 cents per 1,000 square yards, and the Rock Creek dump could not, therefore, at this time be closed without exceeding the 19-cent limitation, or so reducing the hand cleaning force as to seriously cripple its present efficiency.

Very respectfully,

HENRY B. F. MACFARLAND,
President of the Board of Commissioners of the District of Columbia.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 310.

MEMORANDA OF LOYAL CREEK INDIANS.

Mr. TELLER presented the following

MEMORANDA RELATING TO THE CLAIM OF THE LOYAL CREEK INDIANS.

FEBRUARY 21, 1908.—Ordered to be printed.

The United States Supreme Court, in the case of Wright *v.* Tibbitts (91 U. S., 252), held that a commission appointed under the Choctaw and Chickasaw treaty of 1866, for a purpose involving the same principles that are contained in the Creek agreement submitting to the Senate the claim of the Loyal Creek Indians (31 Stat., 869), was a quasi court. It was in no material respect, for all the purposes of this controversy, different from the Court of Commissioners of Alabama Claims, of the Southern Claims Commission, or the Mexican Claims Commission, or Spanish Claims Commission, which have been called together, in pursuance of treaty stipulation or otherwise, to settle and adjust disputed claims for the purpose of their ultimate payment and satisfaction. When the Senate, the quasi court, passed upon these claims they assumed the nature of an ascertained debt "for the purpose of ultimate payment and satisfaction." The rights of the claimants thereby became fixed and determined beyond controversy.

The United States is concluded by the finding of the Senate, the quasi court, by the law of good conscience and fair dealing, as well as by that provision of law sanctioned by a thousand decisions and opinions, which is best stated by the United States Supreme Court in the "Arrenondo" case in these words:

> It is a universal principle that when power and jurisdiction is delegated to an officer or tribunal over a subject-matter, and its exercise is confined to his or their discretion, the acts so done are valid and binding as to the subject-matter, and the individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the power and authority conferred. (6 Pet., 691.)

The object of the Creek agreement was to invest the Senate, a quasi court, with full power and authority to receive, examine, and decide upon the validity and amount of these claims, and the decision of the Senate is conclusive and final. If the Senate pronounced these claims invalid, or pronounced them valid and ascertained and fixed the amount, the award in the premises is not reexaminable. The United States and the Indians as well must abide by it as the decree of a competent tribunal of exclusive jurisdiction. If the claim of these Indians had been rejected by the Senate, it would have been equally as binding

and could not again have been brought under review, without further legislation. (See Comegys *v.* Vasse, 1 Pet., 193.)

Arbitrators exhaust their power when they make a final determination on the matters submitted to them. They have no power after having made an award, to alter it; the authority conferred on them is at an end. (Payne *v.* Morris, 1 Wall., 97.)

If the award be within the submission, and contains the honest decision of the arbitrators after a full and fair hearing, it will not be set aside for error either in law or fact. (Burchell *v.* Marsh, 17 How., 344.)

An award can be set aside only for a plain mistake of law or fact. (Williams *v.* Paschel, 4 Dall., 284.)

In the construction of an award, no intendment shall be indulged to overturn it—but every intendment shall be allowed to uphold it. (Kaethans *v.* Ferrer, 1 Pet., 222; Burchell *v.* Marsh, 17 How., 344.)

Where arbitrators keep within the terms of the reference and there is no fraud, mistake, misconduct, undue influence, or corruption, the award is conclusive on the parties, since it is a tribunal of their own choosing. (Denny *v.* Brown, Fed. Case No. 3, 805; Wolf *v.* Sheldon, 51 Ala., 425; Peachy *v.* Richie, 4 Cala., 205; Van Winkle *v.* Beck, 3 Ill., 488; Ross *v.* Watt, 16 Ill., 99; Kimball *v.* Walker, 30 Ill., 482; Graff *v.* Friedlander, 33 La., Ann. 188; Newburyport Ins. Co. *v.* Oliver, 8 Mass., 402.)

An arbitration which appears regular and unimpeached by facts or denials, is the very highest authority. The question in controversy is as fully determined and the rights of the parties as fully settled as could be by their own agreement or by the judgment of a court. (Harris *v.* Haines, 37 Ark., 348.)

The award of arbitrators under a statute is conclusive against the parties to the submission. (Taylor *v.* Scott, 26 Mo. App., 249.)

These are well-settled principles of law and can not be gainsaid or controverted. In the present case power and jurisdiction were conferred upon the Senate, a quasi court, which, acting wholly within the power and jurisdiction conferred by the agreement, made its award, and no legal power can alter or change the validity or binding force and the effect of that decision and award.

The fact that the House (conferees) refused to make appropriation to pay the award of the Senate, cuts no figure in the case; nor does the fact that the Senate, after making the award and the vesting of the rights of the Indians thereunder, agreed to cut the award in half. It was a matter entirely beyond the jurisdiction of the House—except to appropriate the amount of the award of the Senate—and the award would still stand had no appropriation been made. The Senate never again sat as a board of arbitrators, as a quasi court; but had it done so, any action taken would not have been binding on the Indians, because their rights became unalterably fixed, determined, and vested immediately upon the Senate making its award. As stated by the United States Supreme Court in the case of Comegys *v.* Vasse, above referred to, "the award in the premises is not reexaminable."

ACCORD AND SATISFACTION—RECEIPT IN FULL.

The fact that the act of Congress (32 Stat., 995) provided that the *Indians should accept* the $600,000 as full satisfaction of all claim and

demand growing out of said Loyal Creek claims and a full release to the United States cuts no figure in the case and is entirely immaterial.

There is no principle of the common law better established and more generally recognized than that of a payment, which is in accordance with the contract (award) after its maturity, of a part of a liquidated and ascertained debt is no satisfaction of the whole indebtedness, and that a receipt in full given upon such part payment is a nudum pactum as to the unpaid balance and not binding upon the maker. (Chitty's Con., 2 Perkins' ed., 821, title Payment; 2 Parsons' Con., 4th ed., 129; Bostwick *v.* The United States, 94 U. S., 53; 12 Court of Claims, 67; 15 Court of Claims, 303.)

To make a receipt of a part of a debt a discharge of the whole there must be a new consideration or a voluntary compromise of a disputable or a disputed demand by which each party yields something, or an accord and satisfaction by which a new contract is substituted, or a submission to arbitration. (15 Court of Claims, 279.)

Thousands of decisions by the various national and State courts on the subject might be referred to. There has never been a contrary decision by any court before which the question was submitted.

As stated by Senator Quarrels, who was a member of the Indian Committee when the case was before the Senate:

> The determination of the Senate upon this proposition will amount to an award upon which an action will lie quite independently of the fate of this provision in the other House of Congress. (See pp. 2252, 2253 and 2254 of the Record, vol. 36, pt. 3, 57th Cong., 2d sess.)

Therefore the receipt by the Loyal Creek Indians of the $600,000 in full for the amount awarded by the Senate is a mere nudum pactum, and of no legal binding force whatever.

DAVID M. HODGE,
S. W. BROWN,
Representing the Loyal Creek Indians.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 312.

N. C. McNEEL, ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF N. C. M'NEEL, ADMINISTRATOR OF PAUL M'NEEL, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 21, 1908.

SIR: Pursuant to the annexed order of the court, I transmit herewith a recertified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Congressional, No. 13099. N. C. McNeel, administrator of the personal estate of Paul McNeel, deceased, *v.* The United States.]

Defendant's motion to discontinue this case and to recertify findings in Congressional case No. 10010.

Now comes the defendants, by the Attorney-General, and moves the court to discontinue the preceedings herein and recertify to the United States Senate the findings made in the case of N. C. McNeel, administrator of Paul McNeel's estate, against The United States, No. 10010, Congressional, which was certified to the said Senate on the 22d day of December, 1906, for the reason that the claimant and the defendant in both cases are the same and the bill which was referred under the last reference is for the payment of the claim represented in the bill referred in the former reference, the claimant consenting.

JOHN Q. THOMPSON,
Assistant Attorney-General.
W. W. SCOTT,
Assistant Attorney.

Filed February 20, 1908.

ORDER.

Allowed as findings respecting the same claim between the same parties were certified to Congress December 22, 1906; and as no charge is made that said findings were procured by fraud or false testimony they are to stand, and the court directs that they be recertified to Congress.

BY THE COURT.

February 20, 1908.
A true copy.
Test this 21st day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[Court of Claims. Congressional, No. 10010. N. C. McNeel, administrator of Paul McNeel, deceased, v. The United States.]

STATEMENT OF CASE.

The following bill was referred to the court on the 7th day of February, 1900, by resolution of the United States Senate under an act of Congress approved March 3, 1887, known as the Tucker Act:

"A BILL For the relief of the legal representatives of Paul McNeel.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the legal representatives of Paul McNeel, deceased, of Pocahontas County, West Virginia, the sum of thirty thousand dollars, for property and supplies taken for the use of the United States Army in the years eighteen hundred and sixty-two, eighteen hundred and sixty-three, and eighteen hundred and sixty-four."

The claimant appeared and filed his petition in this court May 24, 1900, in which he makes the following allegations:

That he is a citizen of the United States, a resident of the county of Pocahontas, in the State of West Virginia, and administrator of the estate of Paul McNeel, late of the said county and State, who departed this life on the 8th day of December, in the year 1872, leaving a last will and testament in which he named his widow, Rachel C. McNeel, as executrix, and George S. McNeel as executor, who duly qualified as such in the county court of Pocahontas County.

That the said Rachel C. McNeel died intestate in September, 1887, leaving George S. McNeel as the sole surviving executor of the said estate. A duly authenticated copy of the record of his appointment and qualification as executor is herewith filed as a part of this petition.

Your petitioner further represents that on the 19th day of May, 1900, the county court of Pocahontas County, W. Va., upon petition, accepted the resignation of the said George S. McNeel as sole surviving executor of Paul McNeal, deceased, and your petitioner was by the said court appointed administrator c. t. a. of the said Paul McNeel, and took the oath of office as the law directs. Duly certified copies of the orders accepting the resignation of the said George S. McNeel and appointing your petitioner are filed as a further part of this petition.

Your petitioner further represents that at the commencement of the civil war the said Paul McNeel was seized and possessed of valuable real estate as follows: His home place, known as Little Levels farm; the Stamping Creek farm; the Williams River farm, and the Glade Hill farm.

These farms were all situated in the said county of Pocahontas, and together comprised several thousand acres of excellent blue-grass grazing land, being well stocked with horses, cattle, sheep, hogs, and provisions.

That in April, 1862, there was a general advance toward the east made by the Union army under the command of General Milroy, who led a large force through the upper end of Pocahontas County, where the Glade Hill farm was situated, and upon which at that time there were 80 head of large fat cattle, which were hurriedly driven off with the army and appropriated to its use.

That in January, 1863, 12 fine horses and a herd of 111 fat cattle were taken from the same farm by a detachment of the Union forces under command of Major Bowen
d Captain Ewing, who stated at the time that they were needed for the use of the
.

it in November, 1863, on the night before the battle of Droop Mountain, the *army under command* of General Averill camped on the Little Levels farm

and butchered 50 hogs and took from the cribs 1,500 bushels of corn belonging to the said Paul McNeel. General Averill was supposed to have about 8,000 men and had no supply train with his army.

That in June, 1864, the Federal army under command of Gen. David Hunter, on the retreat from Lynchburg, Va., took and carried away from the Stamping Creek farm 150 cattle, 600 sheep, and 18 horses which belonged to the said Paul McNeel. At the same time all the grain, meat, wagons, harness, etc., from the Stamping Creek farm and the Little Levels farm were taken and carried away by the Union forces for their use.

The petitioner submits a list of property belonging to the said Paul McNeel taken for the use of the Army of the United States, as follows:

April, 1862, 80 head of cattle	$4.800
January, 1863, 111 head of cattle	5,550
January, 1863, 12 head of horses	1,800
November, 1863, 50 head of hogs	1,250
November, 1863, 1,500 bushels of corn	1,500
June, 1864, 150 head of cattle	7,500
June, 1864, 600 head of sheep	3,000
June, 1864, 18 head of horses	3,600
June, 1864, wagons, harness, work oxen, grain, and meat	1,000
Total	30,000

Your petitioner further represents that the horses taken as hereinbefore described were remarkably fine, most of them being offspring of a thoroughbred Canadian stallion, and the cattle were the best to be found in that region of country. There were among them many thoroughbred cows and three thoroughbred bulls. All of the property above mentioned was taken and carried away for the use of the United States Army during the war, and none of it has been paid for.

Your petitioner further represents that many years ago a bill for his relief was introduced into both Houses of Congress, but no action was taken in either House until the 7th of February, 1900, when, by a resolution of the Senate, the said bill, with the accompanying papers, was referred to this honorable court in pursuance of the provisions of an act entitled, "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887. The said order of transmission is as follows:

"IN THE SENATE OF THE UNITED STATES,
"*February 7, 1900.*

"*Resolved*, That the bill S. 1259, entitled 'A bill for the relief of the legal representatives of Paul McNeel, deceased, of Pocahontas County, West Virginia,' now pending in the Senate, together with all the accompanying papers, be, and the same is hereby, referred to the Court of Claims, in pursuance of the provisions of an act entitled 'An act to provide for the bringing of suits against the Government of the United States,' approved March 3, 1887. And the said court shall proceed with the same in accordance with the provisions of such act, and report to the Senate in accordance therewith."

Your petitioner alleges, by way of excuse for the apparent delay in the prosecution of his claim, the following facts:

From the termination of the war to the time of the death of the said Paul McNeel he was so broken in health and so much impoverished by the results of the war that he did not have either the physical ability or the pecuniary means to enable him to give proper attention to the prosecution of the said claim. After the death of the said Paul McNeel his estate fell into the hands of his widow, the said Rachel C. McNeel, and the said George S. McNeel as personal representatives; but the said Rachel C. McNeel was very old and infirm, and the said George S. McNeel was quite young and entirely unused to business methods. Living as he did in a remote and isolated section of the State, his home being 60 miles distant from any railroad, he was ignorant of his rights in the premises, and did not feel that as executor he should assume the responsibility of expending the small means of the estate in a prosecution of a claim which would be attended with so much cost. After the death of the said Rachel C. McNeel, to whom the estate had been devised by the said Paul McNeel, and after her heirs became entitled, they began the search for evidence in support of the claim and determined to prosecute it. Prior to that time they had no vested interest in the claim and no means to enable them to prosecute it, but since that time they have used all proper diligence and have adopted all legitimate methods to secure favorable action by Congress.

Your petitioner further represents that from the commencement to the termination of the civil war the said Paul McNeel was loyal to the Government of the United States.

The case was brought to a hearing on merits on the 4th day of December, 1906.

John Goode, esq., appeared for the claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. During the civil war the military forces of the United States, for the use of the Army, by proper authority, took from claimant's decedent in Pocahontas County, W. Va., property as above described, which at the time and place of taking was reasonably worth the sum of eleven thousand three hundred dollars ($11,300), no payment for which appears to have been made.

II. On February 6, 1905, the court found that the claimant's decedent, Paul McNeel, was not loyal to the Government of the United States during the civil war.

III. It does not appear that this claim was presented to the Quartermaster-General, the Commissary-General of Subsistence, or any other Department of the Government, prior to its presentation to Congress and reference to this court as aforesaid, and no satisfactory reason is assigned therefor.

BY THE COURT.

Filed December 17, 1906.

A true copy.

Test this 21st day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 313.

G. B. HARPER AND J. D. CLEARMAN, EXECUTORS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF G. B. HARPER AND J. D. CLEARMAN, EXECUTORS OF THE ESTATE OF WILLIAM L. CLEARMAN, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 21, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11494. G. B. Harper and J. D. Clearman, executors of the estate of William L. Clearman, deceased, *v.* The United States.]

STATEMENT OF CASE.

This claim was first referred to this court on July 13, 1892, by the Committee on War Claims of the House of Representatives, for findings of fact under the terms of the act approved March 3, 1883, and commonly known as the Bowman Act. The claim not having been previously presented, however, the court was without jurisdiction to determine and report the facts of the case under said reference.

On April 26, 1904, Senate bill No. 1152, Fifty-eighth Congress, was referred to this court by resolution of the United States Senate for findings of fact under the terms of the act approved March 3, 1887. Said bill reads as follows:

"A BILL For the relief of G. B. Harper and J. S. Clearman, executors of W. L. Clearman, deceased

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to G. B. Harper and J. S. Clearman, executors of W. L. Clearman, deceased, late of Newton County, Mississippi, one thousand eight hundred and thirty-seven dollars, the same being in full for and the receipt of the same to be taken and accepted as a full and final discharge of their claim for supplies and stores taken from decedent by the military forces of the United States for army use as aforesaid."

The claimants in their petition make the following allegations:

That they are citizens of the United States and residents of the county of Newton, State of Mississippi; that they are the duly appointed, qualified, and acting executors of the last will and testament of William L. Clearman, deceased, late of said county and State; that during the late civil war said decedent was a citizen of the United States, residing in said county and State; that during said war the military forces of the United States, under proper authority, took from said decedent for use of the Army quartermaster stores and commissary supplies of the kinds and values below stated, to wit:

700 bushels corn, at $1 per bushel	$700
1,000 pounds of bacon, at 15 cents per pound	150
800 pounds of pork, at 12½ cents per pound	100
3 large oxen, at $33.33 each	100
2 fine horses, at $150 each	300
3 mules, at $125 each	375
200 pounds lard, at 15 cents per pound	30
1 saddle and 1 bridle	20
100 chickens, at 25 cents each	25
20 geese, at 50 cents each	10
Bedding	94
60 gallons of molasses, at $1 per gallon	60
Total	1,964

The case was brought to a hearing upon loyalty and merits on the 14th day of January, 1908.

Moyers & Consaul appeared for the claimants, and the Attorney-General, by Philip M. Ashford, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. Claimants' decedent, William L. Clearman, was loyal to the Government of the United States throughout the late civil war.

II. During said war the military forces of the United States, by proper authority, for the use of the Army, took from claimants' decedent, in Newton County, State of Mississippi, property of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of one thousand and ten dollars ($1,010.00), no part of which appears to have been paid.

III. In 1878 the claim was presented to Congress, and thereafter, on July 13, 1892, the same was referred to this court by the Committee on War claims of the House of Representatives under the provisions of the act of March 3, 1883. Thereafter, to wit, on April 26, 1904, said claim was again referred to the court by resolution of the United States Senate, as hereinbefore stated in the statement of the case, and on August 13, 1904, the two cases, on motion of the claimants, were consolidated. No other competent evidence is adduced respecting the delay in the presentation of said claim.

By The Court.

Filed February 3, 1908.
A true copy.
Test this 21st day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 314.

ALFRED D. BULLOCK ET AL.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ALFRED D. BULLOCK ET AL. AGAINST THE UNITED STATES.

FEBRUARY 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 20, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 13106, subnumbers 272, 273, 274, 275, 276, 277, 278, 279, 281, 282, 284, 286, 288, 289, 290, 291, 292, 293, 294, 297, 298, 301, 303, 304, 306. Boston Navy-Yard. Alfred D. Bullock, Joseph F. Baker, John Clark, William M. Carr, Winslow L. Crafts, Charles H. Crocker, Samuel Dwight, John Flynn, John F. Gilmore, Henry G. Hichborn, Patrick Marrow, Eben P. Oakes, Joseph Riley, William P. Raymond; Jennie A. Sawyer, widow of Jefferson Sawyer, deceased; George D. V. Smith, Chester R. Streeter, George K. Sawyer, Albert Sawyer, Samuel J. Cochran, William O. Bailey, William H. Rigby, William N. Winter, John Ward, George H. Young *v.* The United States.]

STATEMENT OF CASE.

This is a claim for the payment to the above-named claimants for services rendered at the Boston Navy-Yard, Boston, Mass., between March 21, 1878, and September 22, 1882, for extra labor above the legal day of eight hours.

On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8261, Fifty-ninth Congress, second session.]

"A BILL For the relief of Christopher Alexander and others.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Christopher Alexander and to the others who have joined with him in a petition to this Congress dated January twenty-ninth, nineteen hundred and seven, the amounts that may be found due to each of them, respectively, for extra labor above the legal day of eight hours while employed by the United States as workmen, laborers, or mechanics at the various navy-yards of the United States, performed by them by reason of and under the provisions of circular numbered eight, issued by the Secre...ry of the Navy on March twenty-first, eighteen hundred and seventy-eight."

Thereafter the claimants named above and each of them offered and filed their respective petitions herein, in which they and each of them aver substantially as follows:

That between March 21, 1878, and the 21st day of September, 1882, they and each of them were employed by the Government of the United States at the navy-yard at Boston, Mass.; that on March 21, 1878, the Secretary of the Navy issued the order referred to in claimants' petitions, known as Circular No. 8, and set forth in Finding I herein.

That during the six months in each year from the date of said order to the 21st day of September, 1882, they worked during all or a portion of the time they were so employed in excess of eight hours per day, and that they and each of them were paid for only eight hours' work per day for the time they were so employed during said period, and that they and each of them are entitled to the amounts set forth in their respective petitions, being the pay for all time worked during said period in excess of eight hours per day.

The case was brought to a hearing on the evidence and merits on the 13th day of February, 1908.

Thomas Dawson appeared for the claimants, and the Attorney-General, by Percy M. Cox, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Between the 21st day of March, 1878, and the 22d day of September, 1882, the claimants herein, or their decedents, and each of them were in the employ of the United States in the navy-yard at Boston, Mass., during which time the following order was in force:

"Circular No. 8.] NAVY DEPARTMENT,
"*Washington, D. C., March 21, 1878.*

"The following is hereby substituted, to take effect from this date, for the circular of October 25, 1877, in relation to the working hours at the several navy-yards and shore stations:

"The working hours will be—

"From March 21 to September 21, from 7 a. m. to 6 p. m.; from September 22 to to March 20, from 7.40 a. m. to 4.30 p. m.; with the usual intermission of one hour for dinner.

"The Department will contract for the labor of mechanics, foremen, leading-men, and laborers on the basis of eight hours a day. All workmen electing to labor ten hours a day will receive a proportionate increase in their wages.

"The commandants will notify the men employed, or to be employed, of these conditions, and they are at liberty to continue or accept employment under them or not.

"R. W. THOMPSON,
"*Secretary of the Navy.*"

II. Said claimants and each of them, or their decedents, while in the employ of the United States as aforesaid worked on the average the number of hours set opposite their respective names in excess of eight hours a day and at the wages below stated, to wit:

Name of claimant.	Number of hours.	Rate per day.	Name of claimant.	Number of hours.	Rate per day.
Alfred D. Bullock	417	$1.76	Charles H. Crocker	428	$3.00
Do	140	2.00	Do	418	3.26
Do	373	2.26	Samuel Dwight	1,258 7/12	5.00
Joseph F. Baker	141	1.22	John Flynn	162	3.50
Do	160	1.20	Do	810	3.26
Do	73	1.40	John F. Gilmore	293	1.76
Do	125	1.50	Do	175	2.00
Do	207	1.80	Do	82	2.26
Do	220	3.00	Do	89	2.50
John Clark	171 5/12	2.50	Do	810	3.00
Do	338 5/12	1.76	Henry G. Hichborn	130	3.00
Do	78	1.50	Do	873	2.76
William M. Carr	362½	1.76	Patrick Marrow	174	3.26
Winslow L. Crafts	232	3.50	Do	268	3.00
Do	721	3.00	Eben P. Oakes	80	3.26

Name of claimant.	Number of hours.	Rate per day.	Name of claimant.	Number of hours.	Rate per day.
Eben P. Oakes	251½	$3.00	George K. Sawyer	238	$3.00
Joseph Riley	424½	3.00	Albert Sawyer	268 7/12	3.00
Do	177 7/12	2.76	Do	1,079½	2.76
Do	486	3.26	Samuel J. Cochran	1,426½	2.50
William P. Raymond	241	3.50	William O. Bailey	276½	3.26
Do	736	3.00	Do	a ½	3.00
Jefferson Sawyer (deceased)	902	2.50	William H. Rigby	1,449½	5.00
George D. V. Smith	88	3.00	William N. Winter	445½	3.00
Chester R. Streeter	936	3.24	Do	a 1	2.76
Do	18	3.50	John Ward	36	3.50
Do	180	3.74	Do	112	3.00
Do	34	4.00	George H. Young	93	3.50
George K. Sawyer	655 7/12	2.76	Do	139	3.00

a Less than 8 hours a day.

III. If it is considered that eight hours constitutes a day's work under the said order of the Secretary of the Navy, then the claimants and each of them, or their decedents, have been underpaid the sums set forth opposite their respective names, as follows:

Alfred D. Bullock, two hundred and thirty-two dollars and eleven cents ($232.11);
Joseph F. Baker, two hundred and ten dollars and seventy-seven cents ($210.77);
John Clark, one hundred and forty-two dollars and sixty-four cents ($142.64);
William M. Carr, seventy-nine dollars and sixty-seven cents ($79.67);
Winslow L. Crafts, three hundred and seventy-one dollars and eighty-seven cents ($371.87);
Charles H. Crocker, three hundred and thirty dollars and eighty-three cents ($330.83);
Samuel Dwight, seven hundred and eighty-six dollars and sixty-two cents ($786.62);
John Flynn, four hundred dollars and ninety-four cents ($400.94);
John F. Gilmore, two hundred and seventy-five dollars and forty-four cents ($275.44);
Henry G. Hichborn, three hundred and forty-nine dollars and ninety-three cents ($349.93);
Patrick Marrow, one hundred and seventy-one dollars and forty cents ($171.40);
Eben P. Oakes, one hundred and twenty-six dollars and seventy-nine cents ($126.79);
Joseph Riley, four hundred and eighteen dollars and fifty-nine cents ($418.59);
William P. Raymond, three hundred and eighty-one dollars and forty-four cents ($381.44);
Jennie A. Sawyer, widow of Jefferson Sawyer, deceased, two hundred and eighty-one dollars and eighty-seven cents ($281.87);
George D. V. Smith, thirty-three dollars ($33);
Chester R. Streeter, four hundred and eighty-eight dollars and ten cents ($488.10);
George K. Sawyer, three hundred and fifteen dollars and forty-three cents ($315.43);
Albert Sawyer, four hundred and seventy-three dollars and fifteen cents ($473.15);
Samuel J. Cochran, four hundred and forty-five dollars and eighty-three cents ($445.83);
William O. Bailey, one hundred and twelve dollars and twenty-nine cents ($112.29);
William H. Rigby, nine hundred and five dollars and seventy-eight cents ($905.78);
William N. Winter, one hundred and sixty-six dollars and sixty-six cents ($166.66);
John Ward, fifty-seven dollars and seventy-five cents ($57.75);
George H. Young, ninety-two dollars and eighty-one cents ($92.81).

IV. The claim of the several individuals hereinbefore mentioned, or either of them, were never presented to any Department or officer of the Government prior to the presentation thereof to Congress and reference to this court, as hereinbefore set forth in the statement of the case, nor is any competent evidence adduced to show why said claimants did not earlier prosecute their said claims.

By the Court.

Filed February 20, 1908.
A true copy.
Test this 20th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 315.

ROBERT B. BILLINGS ET AL.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ROBERT B. BILLINGS ET AL. AGAINST THE UNITED STATES.

FEBRUARY 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 20, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 13106, subnumbers 307, 308, 309, 310, 311, 313, 314, 315, 316, 318, 319, 320, 321, 322, 324, 326, 328, 329, 330, 332, 335, 336, 337, 338, 339, 340. Portsmouth, N. H., Navy-Yard. Robert B. Billings, Franklin H. Bond, William H. Brown, William C. Bray, Isaac H. Farr, John Grant, Robert M. Ham, Henry H. Ham, Albert Hanscom, Thomas L. Jose, Michael E. Long, Frank E. Lawry, Brackett Lewis, James M. Jarvis, William W. Locke, Walter N. Meloon, George W. Muchmore, Christopher Remick, Edwin D. Rand, Augustus S. Zara, Augustus Stevenson, George E. Stackpole, William H. Wilson, Benjamin F. Winn; Joseph A. Meloon and Charles O. Meloon, executors of Nathaniel L. Meloon, deceased; Charles Stewart *v.* The United States.]

STATEMENT OF CASE.

This is a claim for the payment to the above-named claimants for services rendered at the Portsmouth Navy-Yard, Portsmouth, N. H., between March 21, 1878, and September 22, 1882, for extra labor above the legal day of eight hours.

On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8261, Fifty-ninth Congress, second session.]

"A BILL For the relief of Christopher Alexander and others.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Christopher Alexander and to the others who have joined with him in a petition to this Congress, dated January twenty-ninth, nineteen hundred and

seven, the amounts that may be found due to each of them, respectively, for extra labor, above the legal day of eight hours, while employed by the United States as workmen, laborers, or mechanics at the various navy-yards of the United States, performed by them by reason of and under the provisions of circular numbered eight, issued by the Secretary of the Navy on March twenty-first, eighteen hundred and seventy-eight."

Thereafter the claimants named above and each of them offered and filed their respective petitions herein in which they and each of them aver substantially as follows:

That between March 21, 1878, and the 21st day of September 1882, they and each of them were employed by the Government of the United States at the navy-yard, Boston, Mass.; that on March 21, 1878, the Secretary of the Navy issued the order referred to in claimants' petition known as circular No. 8, and set forth in Finding I herein.

That during the six months in each year from the date of said order to the 21st day of September, 1882, they worked during all or a portion of the time they were so employed in excess of eight hours per day, and that they and each of them were paid for only eight hours' work per day for the time they were so employed during said period, and that they and each of them are entitled to the amounts set forth in their respective petitions, being the pay for all time worked during said period in excess of eight hours per day.

The case was brought to a hearing on the evidence and merits on the 13th day of February, 1908.

Thomas Dawson, esq., appeared for the claimants, and the Attorney-General, by Percy M. Cox, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Between the 21st day of March, 1878, and the 22d day of September, 1882, the claimants herein, or their decedents, and each of them were in the employ of the United States in the navy-yard at Portsmouth, N. H., during which time the following order was in force:

"Circular No. 8.]

NAVY DEPARTMENT,
"*Washington, D. C., March 21, 1878.*

"The following is hereby substituted, to take effect from this date, for the circular of October 25, 1877, in relation to the working hours at the several navy-yards and shore stations:

"The working hours will be—

"From March 21 to September 21, from 7 a. m. to 6 p. m.; from September 22 to March 20, from 7.40 a. m. to 4.30 p. m.; with the usual intermission of one hour for dinner.

"The Department will contract for the labor of mechanics, foremen, leading men, and laborers on the basis of eight hours a day. All workmen electing to labor ten hours a day will receive a proportionate increase of their wages.

"The commandants will notify the men employed, or to be employed, of these conditions, and they are at liberty to continue to accept employment under them or not.

"R. W. THOMPSON,
"*Secretary of the Navy.*"

II. Said claimants and each of them, or their decedents, while in the employ of the United States, as aforesaid, worked on the average the number of hours set opposite their respective names in excess of eight hours a day and at the wages stated, to wit:

Name of claimant.	Number of hours.	Rate per day.	Name of claimant.	Number of hours.	Rate per day.
Robert B. Billings	432 1/8	$2.76	Michael E. Long	564 3/8	$2.76
Do	6 4/17	1.76	Do	304 1/8	3.00
Do	332 3/8	3.00	Frank E. Lawry	257 1/8	2.26
Do	a 1 4/17	2.00	Do	23	2.00
Franklin H. Bond	432 1/8	2.00	Brackett Lewis	241	1.50
Do	782 3/8	1.76	William W. Locke	609 1/8	3.00
Do	36	2.50	Walter N. Meloon	444 5/8	3.00
William H. Brown	777 3/8	3.26	George W. Muchmore	227 3/8	3.26
William C. Bray	373 1/8	2.76	Do	1,148	5.00
Do	3 3/8	1.76	Christopher Remick	414 3/8	2.26
Do	377 3/8	3.00	Edwin D. Rand	14 4/17	3.24
Isaac H. Farr	433 3/8	3.26	Do	347 3/8	3.50
Do	317 1/8	3.50	Do	368 1/8	3.00
Do	252	3.76	Augustus Stevenson	1,468 1/8	5.00
John Grant	1,142 5/8	3.00	George E. Stackpole	481 7/17	3.00
Do	205 1/8	3.50	William H. Wilson	870 3/8	1.76
Do	3 1/8	3.24	Benjamin F. Winn	599 3/8	3.00
Robert M. Ham	311 4/17	1.76	Augustus S. Zara	1,719	2.00
Do	180	2.26	Joseph A. Meloon and Charles O. Meloon, executors of Nathaniel L. Meloon, deceased	1,219	3.00
Henry M. Ham	293 4/17	2.50	Do	35	3.24
Do	1,112 5/8	3.00	Charles Stewart	931 1/8	3.00
Albert Hanscom	136	2.26	Do	3 3/8	2.00
Do	31	2.00	Do	a 1/8	1.76
James M. Jarvis	1,011 7/17	3.00			
Thomas L. Jose	288 3/8	1.76			
Do	628 4/17	2.00			
Do	596 1/16	2.26			

a Less than 8 hours a day.

III. If it is considered that eight hours constituted a day's work under the order of the Secretary of the Navy, as aforesaid, during the period from March 21, 1878, to September 22, 1882, then the claimants and each of them, or their decedents, have been underpaid the sums set opposite their respective names, as follows:

Robert B. Billings, two hundred and seventy-four dollars and eighty-three cents ($274.83);

Franklin H. Bond, two hundred and ninety-one dollars and forty cents ($291.40);

William H. Brown, three hundred and sixteen dollars and sixty-six cents ($316.66);

William C. Bray, two hundred and seventy-one dollars and fifteen cents ($271.15);

Isaac H. Farr, four hundred and thirty-three dollars and ninety-nine cents ($433.99);

John Grant, five hundred and nineteen dollars and seventy-seven cents ($519.77);

Robert M. Ham, one hundred and nineteen dollars and thirty-six cents ($119.36);

Henry H. Ham, five hundred and nine dollars and eight cents ($509.08);

Albert Hanscom, forty-six dollars and seventeen cents ($46.17);

James M. Jarvis, three hundred and seventy-nine dollars and thirty-four cents ($379.34);

Thomas L. Jose, three hundred and eighty-eight dollars and sixty-six cents ($388.66);

Michael E. Long, three hundred and eight dollars and ninety cents ($308.90);

Frank E. Lawry, seventy-eight dollars and forty-nine cents ($78.49);

Brackett Lewis, forty-five dollars and eighteen cents ($45.18);

William W. Locke, two hundred and twenty-eight dollars and fifty-six cents ($228.56);

Walter N. Meloon, one hundred and sixty-six dollars and eighty-one cents ($166.81);

George W. Muchmore, eight hundred and ten dollars and thirty-four cents ($810.34);

Christopher Remick, one hundred and seventeen dollars and sixteen cents ($117.16);

Edwin D. Rand, two hundred and ninety-five dollars and eighty-nine cents ($295.89);

Augustus Stevenson, nine hundred and seventeen dollars and sixty cents ($917.60);

George E. Stackpole, one hundred and eighty dollars and sixty cents ($180.60);

William H. Wilson, one hundred and ninety-one dollars and fifty-five cents ($191.55);

Benjamin F. Winn, two hundred and twenty-four dollars and ninety cents ($224.90);

Augustus S. Zara, four hundred and twenty-nine dollars and seventy-five cents ($429.75);

Joseph A. Meloon and Charles O. Meloon, executors of Nathaniel L. Meloon, deceased, four hundred and seventy-one dollars and thirty cents ($471.30);

Charles Stewart, three hundred and forty-nine dollars and ninety cents ($349.90).

IV. The claims of the several individuals hereinbefore mentioned, or either of them, were never presented to any Department or officer of the Government prior to the presentation thereof to Congress and reference to this court as hereinbefore set forth in the statement of the case, nor is any competent evidence adduced to show why said claimants did not earlier prosecute their said claims.

BY THE COURT.

Filed February 20, 1908.
A true copy.
Test this 20th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 316.

METHODIST EPISCOPAL CHURCH SOUTH, HARRODSBURG, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF HARRODSBURG, KY., AGAINST THE UNITED STATES.

FEBRUARY 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 21, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13014. The Methodist Episcopal Church South, of Harrodsburg, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Harrodsburg, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Harrodsburg, Kentucky, the sum of two thousand five hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court March 22, 1907, and filed their petition, in which it is substantially averred that:

During the late civil war the military authorities of the United States took possession of the building and grounds of the Methodist Episcopal Church South, of

Harrodsburg, Ky., consisting of a large, well-constructed brick building of two floors, and occupied the same as a hospital from on or about October 9, 1862, until March or April, 1863; that all the benches were taken out and the property otherwise greatly injured; that a claim on account of the occupation and injury to said property was forwarded, with evidence, to the Hon. C. D. Tucker, Member of Congress, some years ago, but no payment ever made; that the reasonable rental value of said property during such occupation, including the repairs necessary to restore said property to the same condition as before such occupation, was the sum of $2,500, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 12th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by Percy M. Cox, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Harrodsburg, Ky., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During the late civil war, and just after the battle of Perryville, Ky., in October, 1862, the claimants' church building, described in the petition, was taken possession of by the military forces of the United States and used as a hospital for about six months for the wounded soldiers of both the Federal and Confederate armies, and while so occupied the building and furnishings were damaged. The reasonable rental value of said building during said period, including the damages in excess of ordinary wear and tear, was then and there the sum of seven hundred and fifty dollars ($750), no part of which appears to have been paid.

III. The claim herein was never presented in any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not presented earlier.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 19th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 317.

TRANSMISSION OF SENATE RESOLUTION DEPLORING ASSASSINATION OF KING AND CROWN PRINCE OF PORTUGAL.

LETTER

FROM

THE ACTING SECRETARY OF STATE,

TRANSMITTING

A COPY OF A DISPATCH FROM THE AMERICAN MINISTER AT LISBON REPORTING THE TRANSMISSION TO THE PORTUGUESE MINISTER OF FOREIGN AFFAIRS THE SENATE RESOLUTION OF FEBRUARY 3, 1908, DEPLORING THE ASSASSINATION OF THE KING AND CROWN PRINCE OF PORTUGAL.

FEBRUARY 24, 1908.—Referred to the Committee on Foreign Relations and ordered to be printed.

DEPARTMENT OF STATE,
Washington, February 21, 1908.

SIR: I have the honor to inclose for the information of the Senate a copy of a dispatch from the American minister at Lisbon, in which he reports that he had transmitted to the Portuguese minister of foreign affairs the Senate resolution of February 3 last, deploring the assassination of the King and crown prince of Portugal.

I have the honor to be, sir, your obedient servant,

ROBERT BACON,
Acting Secretary.

Hon. CHARLES W. FAIRBANKS,
Vice-President of the United States.

AMERICAN LEGATION,
Lisbon, February 5, 1908.

SIR: I have the honor to confirm your cable instructions of February 4 as follows:

BRYAN, *Minister, Lisbon:*

The Senate passed yesterday the following resolution:

"*Resolved,* That the death by unlawful and inhuman violence of the King and crown prince of Portugal is sincerely deplored by the Senate of the United States of America.

"*Resolved*, That a copy of these resolutions be delivered to the President of the United States with the request that he communicate the same to the Government of Portugal."

You will communicate this to the minister for foreign affairs expressing the sympathy and good will with which the President thus complies with the request of the Senate.

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and to state that I have transmitted the resolutions of the Senate to the minister for foreign affairs with suitable expressions.

I have the honor to be, sir, your obedient servant,

CHARLES PAGE BRYAN.

Hon. ELIHU ROOT,
Secretary of State, Washington, D. C.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 318.

SHAWNEE TRAINING SCHOOL, ETC.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

BY DIRECTION OF THE PRESIDENT, THE INFORMATION CALLED FOR BY SENATE RESOLUTION OF JANUARY 21, 1908, WITH RESPECT TO THE SHAWNEE TRAINING SCHOOL.

FEBRUARY 24, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 24, 1908.

SIR: In accordance with the direction of the President, I herewith present the information called for by Senate resolution dated January 21, 1908, as completely as can possibly be done from the records of the Department with the funds available under the existing appropriations and without suspension of the necessary administrative business of the Indian Bureau to the extent of interfering with its current work.

The information called for in the first paragraph of the resolution is comparatively easy to compile, with the exception of that part calling for the total expenditure for the Shawnee school for the fiscal year ending June 30, 1907. The ledgers of the Indian Office are kept by appropriations. The Shawnee school is supported out of the appropriation "Indian school support," and there are 60 boarding schools and 100 day schools maintained by this appropriation, so that the labor necessary to segregate the expenditures from this appropriation so as to determine the exact amount expended in behalf of the Shawnee school would be very great indeed. It can be done, but it is not possible to indicate even approximately the time that will be required. The number of clerks acquainted with the details is limited, and hence, even though it were possible to detail a large number to get the information, it is impracticable.

The information called for by the second paragraph is inclosed, and is taken from the statement of the agent furnished annually, showing the date of the erection, cost of construction, and present value of the buildings at the school. However, the figures given are merely approximate. To discover the actual cost would involve the same labor that would be necessary to determine the actual expenditure. It would also require much time to get the exact cost of the lighting plant, water system, etc., simply because these are small affairs, and

expenditures therefor have been made through a series of years, not from a special appropriation but from one general in its character.

The records here do not disclose the information called for in paragraphs 3 and 4, and to obtain this it would be necessary to employ some person to do the work. A great deal of correspondence would be necessary with absentees or those not found readily, and to be of any value each allotment must be visited in person, and these allotments are scattered over four large counties.

In no other way that I know of is it possible to find out who of these allottees were residing on their allotments on January 1, 1908, and as there were originally 1,489 citizen Potawatomies allotted, 563 Absentee Shawnees, and 283 Mexican Kickapoos, it can readily be seen that a compliance with this resolution with respect to paragraphs 3 and 4 can only be made by hiring persons for the special purpose. There is no money available to pay such employees. If the Senate or the Congress desires this information, and sufficient money is appropriated to pay the expense of obtaining it, the information can be submitted at the next session of the Congress, but hardly at this, because the money probably would not be available long enough before the close of the session to do the work.

There are manifest difficulties in the way of obtaining the information called for by paragraph 5. Under the law controlling the allotments to the Absentee Shawnees and citizen Potawatomies, they have been able for a number of years to sell a part of their allotments, and a great many of these Indians have taken advantage of this provision, so that the total number of persons transferring would not show the total number of Indians who have parted with all their lands. About all that can be done in this case is to give the total number of allottees, the total number of acres transferred, and the total acreage now held in allotment.

Attached will be found all the information that can now be provided.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The PRESIDENT OF THE SENATE.

PARAGRAPH 1.

1. Statement as to the number and kind of each and every employee of the Shawnee Training School, showing the sex and compensation paid.

No.	Employee.	Compensation.	Sex.	White or Indian.
1	Superintendent	$1,500	Male	White.
1	Clerk	1,000	do	Indian.
1	Physician	400	do	White.
1	Teacher	600	Female	Do.
1	Kindergartner	600	do	Do.
1	Industrial teacher	720	Male	Do.
1	Matron	600	Female	Do.
1	Assistant matron	500	do	Do.
1	Seamstress	450	do	Do.
1	Laundress	450	do	Do.
1	Baker	180	do	Indian.
1	Cook	450	do	White.
1	Farmer	660	Male	Indian.
1	*Engineer*	300	do	Do.
1	*Bandmaster*	p. m. 30	do	Do.

2. Statement showing the approximate cost of operating the Shawnee School for the fiscal year ending June 30, 1907:

Annual estimate goods	$7,645.00
Subsistence	3,401.85
School books	80.37
Medical supplies	120.57
Salaries of employees, actual	8,666.82
Miscellaneous open-market purchases; actual	1,626.00
Repairs and addition to buildings	2,309.96
Total	23,850.57

3. Statement giving the number and description of buildings at said school, and how occupied on January 1, 1908:

1 barn, 40 by 64, frame, 4 rooms.
1 barn, hay, 20 by 48, frame, 1 room.
1 carpenter shop, 24 by 72, frame, 9 rooms.
1 warehouse, 34 by 114, frame, 10 rooms.
1 laundry, 20 by 50, frame, 4 rooms.
1 pump house, 16 by 32, frame, 1 room.
1 dwelling, employees, 18 by 24, frame, 4 rooms.
1 dwelling, employees, 35 by 50, frame, 8 rooms.
1 chicken house, 20 by 44, frame, 1 room.
1 crib, 38 by 58, frame, 4 rooms.
1 building, classroom, 20 by 68, frame, 5 rooms.
2 dormitories, 40 by 60, stone and brick, 14 rooms.
1 mess hall, 62 by 72, stone and brick, 10 rooms.

4. Statement giving the maximum attendance for 1907 of the Indian and other pupils of said school, showing the name of the tribe or band to which each of the several Indian pupils belong:

Maximum attendance of Indian pupils, 1907, 134.

Name of tribe or band to which each of the several Indian pupils belong:

Pottawatomie, Shawnee, Kickapoo, Delaware, Sac and Fox, and Adopted Shawnees.

PARAGRAPH 2.

Statement as to the cost of buildings now completed:

1 barn	$1,200	1 dwelling, employees	$1,000
1 barn, hay	400	1 chicken house	200
1 carpenter shop	500	1 crib	700
1 warehouse	1,200	1 building, class room	1,000
1 laundry	650	2 dormitories	11,361
1 pump house	400	1 mess hall	7,694
1 dwelling, employees	600		

(Paragraphs 3 and 4 omitted.)

PARAGRAPH 5.

1. The number of allotments that have been transferred and sold by approval of the Department, giving the acreage thereof.

Inasmuch as a large number of allottees have sold a part only of their land, it is difficult to submit answer to this, but the total area sold by citizen Pottawatomies and Absentee Shawnees is 39,294.249 acres. The Mexican Kickapoos have sold 3,259.49 acres.

2. The number of allottees to whom patents have been issued and the acreage covered by such patents.

It is assumed that this question means patents in fee. If so, 157 patents have been issued to Absentee Shawnees and citizen Pottawatomies, covering 13,405.48 acres. One only has been issued to a Mexican Kickapoo, and is for 80 acres.

3. The number of allotments under the jurisdiction of the Shawnee school that have not been conveyed and the acreage thereof.

For reasons above set forth the best that can be done is to show the total acreage now held by these Indians. The citizen Pottawatomies and Absentee Shawnees have 242,640.91 acres. The Mexican Kickapoos have 22,207.90 acres.

4. The total acreage of all allotments originally within said superintendency, except such allotments as have been canceled by the Secretary of the Interior and those of the Mexican Kickapoos named in the act of March 3, 1905, is as follows:

	Acres.
Citizen Pottawatomies	213,847.25
Absentee Shawnees	68,087.09
Mexican Kickapoos	21,647.90
Total	303,582.24

PARAGRAPH 6.

The tribes of pupils enrolled, other than Pottawatomie and Shawnee Indians, and the number of each tribe, is as follows:

Fiscal year 1906:		Fiscal year 1907:	
Delaware	2	Delaware	2
Kickapoo	4	Kickapoo	9
Sac and Fox	3	Sac and Fox	5
Adopted Shawnee	7	Adopted Shawnee	7
	16	Creek and Shawnee	1
			24

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 319.

BELLE BATEMAN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF BELLE BATEMAN, WIDOW OF ARTHUR E. BATEMAN, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 25, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 24, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, No. 13093-3. Belle Bateman, widow of Arthur E. Bateman *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's decedent was serving as an officer in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes substantially the following allegations:

That Arthur E. Bateman served as mate in the United States Navy on the receiving ship *New Hampshire*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances, to which he is entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong. (125 U. S., 656.)

That the difference between sea pay and shore pay, amounting to $112.89, is due to claimant, but that payment of same has been prohibited by the act of September 30, 1890.

IV. The claims of the several individuals hereinbefore mentioned, or either of them, were never presented to any Department or officer of the Government prior to the presentation thereof to Congress and reference to this court as hereinbefore set forth in the statement of the case, nor is any competent evidence adduced to show why said claimants did not earlier prosecute their said claims.

BY THE COURT.

Filed February 20, 1908.
A true copy.
Test this 20th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 316.

METHODIST EPISCOPAL CHURCH SOUTH, HARRODSBURG, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF HARRODSBURG, KY., AGAINST THE UNITED STATES.

FEBRUARY 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 21, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13014. The Methodist Episcopal Church South, of Harrodsburg, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Harrodsburg, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Harrodsburg, Kentucky, the sum of two thousand five hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court March 22, 1907, and filed their petition, in which it is substantially averred that:

During the late civil war the military authorities of the United States took possession of the building and grounds of the Methodist Episcopal Church South, of

The court, upon the evidence and report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and a resident of Crested Butte, Colo., and is the identical person who served as a gunner on the receiving ships *New Hampshire* and *Worcester* from July 2, 1875, to February 11, 1876.

For said service claimant has been paid the shore pay and allowances of a gunner, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he has received, and sea pay and allowances, which he claims to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

II. During the time claimant was attached to said receiving ships as aforesaid, he had, or was required to have, his quarters and to mess on board said vessels, and was required to wear his uniform, and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of a gunner from July 2, 1875, to February 11, 1876, and the amount which claimant has received for his service during that period is one hundred and eighty-four dollars and ninety-five cents ($184.95), no part of which has been paid.

BY THE COURT.

Filed February 20, 1908.
A true copy.
Test this 21st day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 322.

JOHN S. WALTEMEYER.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF JOHN S. WALTEMEYER AGAINST THE UNITED STATES.

FEBRUARY 25, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 24, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13175. John S. Waltemeyer *v.* United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant was serving as an acting carpenter in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring Senate bill No. 5949, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the —— day of ——, 1908.

Mr. Louis A. Pradt appeared for the claimant, and the Attorney-General, by John Q. Thompson, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes substantially the following allegations:

This claim was previously presented to the proper accounting officers of the Treasury Department for settlement and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being $122.46. This action was reported to Congress by the Secretary of the Treasury for appropriation. In appropriating for said allowance (and others of like character) Congress made the following proviso:

"That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the

filing of the petition in the Court of Claims upon which the judgment was rendered, which, being affirmed by the Supreme Court, has been adopted by the accounting officers as the basis for the allowance of said claim."

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay, as the same had been settled under the said decision in United States against Strong, and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the case of Strong *v.* The United States was filed in the Court of Claims.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which the claimant would have been entitled under the decision in United States against Strong, had Congress not prohibited the payment of the same, was $122.46.

Subsequent appropriation statutes have contained the same proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, make the following

FINDINGS OF FACT.

The claimant is a citizen of the United States and a resident of the State of Massachusetts, and is the identical person whose claim under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

The amount found due claimant by the accounting officers under said decision was $122.46; the amount suspended under the proviso to the act of Congress approved March 2, 1889, and which still remains unpaid is one hundred and twenty-two dollars and forty-six cents ($122.46).

BY THE COURT.

Filed February 20, 1908.

A true copy of the findings of fact as filed by the court.

Test this 21st day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 323.

FLORA C. MARTINE.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF FLORA C. MARTINE, WIDOW OF ALFRED H. MARTINE, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 25, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 24, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, No. 13093—11. Flora C. Martine, widow of Alfred H. Martine, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay, while claimant's decedent was serving as an officer in the Navy of the United States upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes substantially the following allegations:

That Alfred H. Martine served as an acting ensign in the United States Navy on the receiving ship *Ohio*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances, to which he is entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay, amounting to $691.91, is due to claimant, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and, after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and a resident of the State of Tennessee, and is the widow of Alfred H. Martine, who served as an acting ensign on the receiving ship *Ohio*, from May 4, 1866, to June 30, 1868.

For said service claimant's decedent has been paid the shore pay and allowances of an acting ensign, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he received, and sea pay and allowances, which she claims to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656), had not Congress prohibited the payment of the same.

II. During the time claimant's decedent was attached to said receiving ship as aforesaid he had his quarters and messed on board said vessel, and was required to wear his uniform and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of an acting ensign from May 4, 1866, to June 30, 1868, and the amount which claimant has received during that period is six hundred and ninety-one dollars and ninety-one cents ($691.91), no part of which has been paid.

BY THE COURT.

Filed February 20, 1908.
A true copy.
Test this 21st day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 324.

ELIZABETH N. COURTNEY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ELIZABETH N. COURTNEY, WIDOW OF CHARLES COURTNEY, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 25, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 24, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, No. 13093-7. Elizabeth N. Courtney, widow of Charles Courtney, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's decedent was serving as an officer in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes substantially the following allegations;

That Charles Courtney served as an acting master on the receiving ship *Ohio*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances to which he is entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay, amounting to $378.81, is due to claimant, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and, after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and a resident of the State of Tennessee, and is the widow of Alfred H. Martine, who served as an acting ensign on the receiving ship *Ohio*, from May 4, 1866, to June 30, 1868.

For said service claimant's decedent has been paid the shore pay and allowances of an acting ensign, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he received, and sea pay and allowances, which she claims to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656), had not Congress prohibited the payment of the same.

II. During the time claimant's decedent was attached to said receiving ship as aforesaid he had his quarters and messed on board said vessel, and was required to wear his uniform and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of an acting ensign from May 4, 1866, to June 30, 1868, and the amount which claimant has received during that period is six hundred and ninety-one dollars and ninety-one cents ($691.91), no part of which has been paid.

By the Court.

Filed February 20, 1908.
A true copy.
Test this 21st day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 324.

ELIZABETH N. COURTNEY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ELIZABETH N. COURTNEY, WIDOW OF CHARLES COURTNEY, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 25, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 24, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the Court of Claims. Congressional, No. 13093-7. Elizabeth N. Courtney, widow of Charles Courtney, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's decedent was serving as an officer in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes substantially the following allegations;

That Charles Courtney served as an acting master on the receiving ship *Ohio*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances to which he is entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay, amounting to $378.81, is due to claimant, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. That claimant is a citizen of the United States and a resident of the State of Massachusetts, and is the widow of Charles Courtney, who served as acting master on the receiving ship *Ohio* from October 25, 1864, to October 22, 1865, and from November 2, 1865, to November 10, 1865.

For said service claimant's decedent has been paid the shore and allowances of an acting master, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances which he received and sea pay and allowances which she claims to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of the same.

II. During the time claimant's decedent was attached to said receiving ship as aforesaid he had his quarters and messed on board said vessel, and was required to wear his uniform and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of an acting master from October 25, 1864, to October 22, 1865, and from November 2, 1865, to November 10, 1865, and the amount which claimant has received during that period is three hundred seventy-eight dollars and eighty-one cents ($378.81), no part of which has been paid.

BY THE COURT.

Filed February 20, 1908.
A true copy.
Test this February 24, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 327.

SUPPLEMENTAL ESTIMATE FOR CLERKS IN DIVISION OF MILITIA AFFAIRS.

LETTER

FROM

THE SECRETARY OF THE TREASURY.

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE SECRETARY OF WAR SUBMITTING SUPPLEMENTAL ESTIMATE OF APPROPRIATION, ETC., FOR ONE CLERK AT $1,400 AND ONE CLERK AT $1,200 FOR THE DIVISION OF MILITIA AFFAIRS.

FEBRUARY 26, 1908—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, February 25, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of War, of the 24th instant, submitting a supplemental estimate of appropriation for the fiscal year ending June 30, 1909, under the head of "Salaries, office of Secretary of War," for one clerk at $1,400 and one clerk at $1,200 for the division of militia affairs in said office.

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

WAR DEPARTMENT,
Washington, February 24, 1908.

SIR: I have the honor to forward herewith for transmission to Congress a supplemental estimate of an appropriation of $2,600, required for the service of the fiscal year ending June 30, 1909, for payment of one clerk at $1,400 per annum, and one at $1,200 per annum, in the division of militia affairs, Office of the Secretary of War.

Very respectfully,

WM. H. TAFT,
Secretary of War.

The SECRETARY OF THE TREASURY.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1909, by the Secretary of War.

WAR DEPARTMENT.

Salaries, Office of Secretary of War—	
1 clerk of class 2 (submitted)	$1,400
1 clerk of class 1 (submitted)	1,200
Total	2,600

NOTE.—This estimate is submitted for the purpose of providing clerks for a new division recently created in the Office of the Secretary of War, to be known as the division of militia affairs, and which is vested with the transaction of business pertaining to the organized and unorganized militia of the United States.

As the order creating this division was not issued until February 12, 1908, it was not possible to include the amount of this estimate with the regular annual estimates of the War Department submitted in August, 1907, and it is deemed imperatively necessary that provision should be made in the legislative appropriation bill for the fiscal year ending June 30, 1909, for the clerks specified in above estimate. (*John C. Scofield, Chief Clerk.*)

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 328.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, OF GREAT CACAPON, W. VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF GREAT CACAPON, W. VA., AGAINST THE UNITED STATES.

FEBRUARY 26, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 25, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13007. Trustees of the Methodist Episcopal Church South, of Great Cacapon, W. Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation and injury to property by military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

["S. 7110, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Great Cacapon, West Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Great Cacapon, West Virginia, the sum of nine hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said trustees of said church appeared in this court April 30, 1907, and filed their petition, in which it is substantially averred—

That during the late civil war the military authorities of the United States, namely, Cole's Black Horse Cavalry, of the Federal Army, occupied the church building of

the claimants and tore it down completely and used the materials to build stables and for other military purposes; that a reasonable rental value of said property at the time of said occupation, including the sum necessary to restore said property to the same condition as before said occupation, was the sum of $900, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

Coldren & Fenning appeared for the claimants, and the Attorney-General, by W. W. Scott, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Great Cacapon, W. Va., as a church was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and tore down the same and used the material therein contained in the construction of stables for horses. The reasonable value of the building so destroyed was at the time and place the sum of five hundred and thirty dollars ($530), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory reason is adduced showing why the claim was not earlier presented.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 24th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 329.

J. G. LE BLANC, ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF J. G. LE BLANC, ADMINISTRATOR OF ESTATE OF JEAN CROUCHET, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 26, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 25, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11857. J. G. Le Blanc, administrator of estate of Jean Crouchet, deceased, *v.* The United States.]

STATEMENT OF CASE.

On March 3, 1905, by resolution of the United States Senate, Senate bill No. 6463, Fifty-eighth Congress, for relief of the estate of Jean Crouchet, deceased, was referred to this court for findings of fact under the terms of the act approved March 3, 1887. Said bill reads as follows:

"A BILL For the relief of the estate of Jean Crouchet, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to the estate of Jean Crouchet, deceased, late of Iberia Parish, Louisiana, the sum of twelve thousand five hundred and sixty dollars, in full compensation for stores and supplies and property taken for the use of and used by the Federal forces during the late civil war."

The case was brought to a hearing on loyalty and merits on the 29th day of October, 1907.

Moyers & Consaul appeared for the claimant, and the Attorney-General, by Clark McKercher, esq., his assistant, and under his directions, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes the following allegations:

That he is a citizen of the United States and a resident of the parish of Iberia, State of Louisiana; that he is the duly appointed, qualified, and acting administrator of the estate of Jean Crouchet, deceased, late of said parish and State.

That during the late civil war said decedent had taken from him by the United States military forces, under proper authority, stores and supplies and property of the kinds and values below mentioned, to wit:

10,700 feet of lumber, at $20 per M	$214
5 head of gentle milch cows, at $25 per head	125
2 American horses, at $150 each	300
4 American mules, at $150 each	600
5 hogsheads of sugar, at $100 each	500
160 pounds of coffee, at 50 cents per pound	80
200 barrels of corn	200
40 bales of cotton, at $192 per bale	7,680
Total	9,699

The said decedent died in 1879, prior to the establishment of the French and American Claims Commission, which was the only tribunal having jurisdiction of this claim.

The court, upon the evidence and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. The claimant's decedent, Jean Crouchet, was during the late civil war a French subject, and is shown to have been neutral during said period.

II. During the late civil war for the suppression of the rebellion the military forces of the United States, for the use of the Army, took from the claimant's decedent in the parish of Iberia, State of Louisiana, property of the kind and character described in the petition, other than cotton, which was then and there reasonably worth the sum of ten hundred and forty dollars ($1,040), no part of which appears to have been paid.

III. During said war there was also taken from the said claimant's decedent forty (40) bales of cotton, which was used in the construction of fortifications as a military necessity, the value of which cotton is not established to the satisfaction of the court.

IV. The claimant herein being an alien, a citizen of France, residing in Louisiana during the late civil war, did not for that reason present his claim to the Southern Claims Commission or to any other Department of the Government until its presentation to Congress and reference to this court by resolution of the United States Senate as hereintofore set forth in the statement of this case.

BY THE COURT

Filed November 4, 1907

A true copy.

Test this 24th day of January, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 330.

JOHN H. BURTIS AND OTHERS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF JOHN H. BURTIS AND THIRTEEN OTHER CLAIMANTS, AS SUBNUMBERED IN THE ANNEXED FINDINGS, AGAINST THE UNITED STATES.

FEBRUARY 26, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 25, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 13106. John H. Burtis, subnumber 345; Cornelius Bennett, subnumber 347; William Croft, subnumber 348; Joseph Clyne, subnumber 350; Jacob Callas, subnumber 352; James A. Driver, subnumber 354; Wellington Griffith, subnumber 360; George W. Heald, subnumber 363; James Hepenstall, subnumber 364; George B. Heald, subnumber 365; John Knight, subnumber 369; Edward Northup, subnumber 372; John D. Post, subnumber 373; Patrick H. White, subnumber 380, Brooklyn Navy-Yard.]

STATEMENT OF CASE.

This is a claim for payment to the above-named claimants for service rendered at the United States navy-yard at League Island, Pa., above a legal day of eight hours.

On March 2, 1907, the United States Senate referred to the court a bill in the following words:

["S. 8261, Fifty-ninth Congress, second session.]

"A BILL For the relief of Christopher Alexander and others.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Christopher Alexander and to the others who have joined with him in a petition to this Congress, dated January twenty-ninth, nineteen hundred and seven, the amounts that may be found due to each of them, respectively, for extra labor, above the legal day of eight hours, while employed by the United States as workmen, laborers, or mechanics at the various navy-yards of the United States, performed by

them by reason of and under the provisions of Circular Numbered Eight, issued by the Secretary of the Navy on March twenty-first, eighteen hundred and seventy-eight."

Thereafter the claimants above named and each of them filed their respective petitions in which they and each of them aver substantially as follows:

That between March 21, 1878, and September 21, 1882, they and each of them were employed by the Government of the United States at the navy-yard at Brooklyn, N. Y.; that on March 21, 1878, the Secretary of the Navy issued the order referred to in the petition of the claimants and known as "Circular No. 8;" that during six months in each year from the date of said order, to September 21, 1882, they worked during all or a portion of the time they were so employed in excess of eight hours per day, and that they and each of them were paid for only eight hours work per day for the time they were so employed during said period; and that they and each of them are entitled to the amounts set forth in their respective petitions, being the pay for all time worked during said period in excess of eight hours per day.

The case was brought to a hearing on the evidence and merits on February 20, 1908.

Thomas Dawson appeared for the claimants, and the Attorney-General, by Percy M. Cox, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument on both sides, make the following

FINDINGS OF FACT.

I. Between the 21st of March, 1878, and the 21st of September, 1882, the claimants and each of them above named were in the employ of the United States in the navy-yard at Brooklyn, N. Y., as laborers, workmen, or mechanics, during which time the following order was in force:

"Circular No. 8.]

"NAVY DEPARTMENT,
"*Washington, March 21, 1878.*

"The following is hereby substituted, to take effect from this date, for the circular of October 25, 1877, in relation to the working hours at the several navy-yards and shore stations:

"The working hours will be, from March 21 to September 21, from 7 a. m. to 6 p. m.; from September 22 to March 20, from 7.40 a. m. to 4.30 p. m., with the usual intermission of one hour for dinner. The Department will contract for the labor of mechanics, foremen, leading men, and laborers on the basis of eight hours a day. All workmen electing to labor ten hours a day will receive a proportionate increase of their wages.

"The commandants will notify the men employed or to be employed of these conditions, and they are at liberty to continue or accept employment under them or not.

"R. W. THOMPSON,
"*Secretary of the Navy.*"

II. Said claimants and each of them while in the employ of the United States as aforesaid, worked on the average the number of hours set opposite their respective names in excess of eight hours a day at the prices below stated, to wit:

Sub. No.	Name of claimant.	Number of hours in excess of 8 hours a day.	Rate per day.
345	John H. Burtis	499½ hours	$3.00
		32 $\frac{1}{3}$ hours	3.26
		62 hours	3.50
347	Cornelius Bennett	682½ hours	1.50
		30¼ hours	2.00
		520¼ hours	2.36
		135 hours	2.60
348	William Croft	174 $\frac{1}{12}$ hours	3.00
		86½ hours	2.76
350	Joseph Clyne	263 $\frac{7}{8}$ hours	2.50
		23¾ hours	2.76
		158 $\frac{7}{12}$ hours	3.00
352	Jacob Callas	52 hours	3.00
		108 hours	3.50
354	James A. Driver	297½ hours	2.76
		739 $\frac{1}{12}$ hours	3.09
360	Wellington Griffith	155¼ hours	3.00

Sub. No.	Name of claimant.	Number of hours in excess of 8 hours a day.	Rate per day.
363	George W. Heald	69 hours	$0.84
		263½ hours	.96
		101 7/12 hours	1.10
		96 hours	1.14
		5 hours	1.42
		259 hours	1.50
		143¾ hours	1.80
		125 hours	1.96
		6 hours	3.40
		3½ hours less than 8 hours a day.	.98
364	James Hepenstall	1,448½ hours	5.00
365	George B. Heald	1,078½ hours	3.00
		72 hours	3.26
369	John Knight	305½ hours	3.00
		205½ hours	3.26
		109 hours	3.50
372	Edward Northup	418 1/12 hours	3.00
		101 1/12 hours	3.26
		184 hours	3.50
373	John D. Post	321 1/12 hours	3.00
		305½ hours	3.26
		105 hours	3.50
380	Patrick H. White	190½ hours	3.00

III. If it is considered that eight hours constituted a day's work under the order of the Secretary of the Navy, as aforesaid, during the period from March 21, 1878, to September 22, 1882, then the claimants have been underpaid the sums set opposite their respective names, as follows:

John H. Burtis, three hundred and forty-six dollars and thirty-nine cents ($346.39).

Cornelius Bennett, three hundred and thirty-two dollars and eighty cents ($332.80).

William Croft, ninety-five dollars and thirteen cents ($95.13).

Joseph Clyne, one hundred and fifty dollars and three cents ($150.03).

Jacob Callas, sixty-six dollars and seventy-five cents ($66.75).

James A. Driver, three hundred and seventy-nine dollars and eighty cents ($379.80).

Wellington Griffith, fifty-eight dollars and twenty-two cents ($58.22).

George W. Heald, one hundred and eighty-one dollars and thirty-four cents ($181.34).

James Hepenstall, nine hundred and five dollars and ten cents ($905.10).

George B. Heald, four hundred and thirty-three dollars and seventy-seven cents ($433.77).

John Knight, two hundred and forty-five dollars and eighty cents ($245.80).

Edward Northup, two hundred and seventy-eight dollars and forty-seven cents ($278.47).

John D. Post, two hundred and ninety dollars and ninety-two cents ($290.92).

Patrick H. White, seventy-one dollars and fifty-nine cents ($71.59).

IV. Several of the claimants hereinbefore mentioned filed their claims in this court in September, 1888. In 1906 they were dismissed for want of prosecution, and no reason is given why said claimants did not prosecute said claims to a final judgment in this court.

Except as above stated the claims were never presented to any Department or officer of the Government prior to the presentation thereof to Congress and reference to this court as hereinbefore set forth in the statement of the case, nor is any competent evidence adduced to show why said claimants did not earlier prosecute their said claims.

By the Court

Filed February 25, 1908.

A true copy.

Test this 25th day of February, A. D. 1908.

[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 331.

MRS. L. H. ROWLAND, ADMINISTRATRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF MRS. L. H. ROWLAND, ADMINISTRATRIX OF WILLIS J. MORAN, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 26, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 25, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12302. Mrs. L. H. Rowland, administratrix of estate of Willis J. Moran, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled cause is for stores and supplies alleged to have been furnished to the military forces of the United States for their use in the war for the suppression of the rebellion.

The claim was first referred to the court by the Committee on War Claims of the House of Representatives under the act of March 3, 1883. On June 10, 1901, on motion of the defendants, the cause was dismissed for lack of prosecution. Thereafter, on March 31, 1906, the United States Senate, by resolution, referred to the court, under the act of March 3, 1887, known as the Tucker Act, a bill in the following words:

"A BILL For the relief of Willis J. Moran.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to Willis J. Moran, of Benton County, Mississippi, the sum of two thousand two hundred and seventy-one dollars, in full compensation for stores, supplies, and property taken for the use of and used by the Federal forces during the late civil war."

The case was brought to a hearing upon loyalty and merits on the 28th day of October, 1907.

Moyers & Consaul appeared for claimant, and the Attorney-General, by S. S. Ashbaugh, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes the following allegations:

That she is a citizen of the United States and a resident of the county of Benton, State of Mississippi; that she is the duly appointed, qualified, and acting administratrix of the estate of her deceased father, Willis J. Moran, late of said county and State.

That during the late civil war said Willis J. Moran was a citizen of the United States, residing in what was then the county of Tippah, State of Mississippi, forming what is now a part of said county of Benton; that during said war the United States military forces, under proper authority, took from said Willis J. Moran and converted to the use of the United States Army quartermaster stores and commissary supplies of the kinds and values below stated, to wit:

Taken from farm of Willis J. Moran, in Tippah County, Miss., near Grand Junction, Tenn., by troops stationed at Grand Junction and La Grange, Tenn.:

December, 1862—	
1 mare	$150
1 horse	150
500 bushels corn	300
February, 1863—	
1,000 pounds bacon	125
1,200 pounds pork	96
7 beef cattle	140
March, 1863—	
2 horses	300
1 horse	100
April, 1863—1 horse	150
November, 1863—1 mule	150
1864—200 bushels corn	120
1862 and 1863—10 tons fodder and oats	200
1865—2 horses	300
Total	2,281

The court, upon the evidence and after considering the briefs and arguments of counsel upon both sides, makes the following

FINDINGS OF FACT.

I. Claimant's decedent, Willis J. Moran, was loyal to the Government of the United States throughout the late civil war.

II. During said war the United States military forces, by proper authority, for the use of the Army, took from claimant's decedent, in Tippah County, State of Mississippi, property of the kind and character described in the petition which at the time and place of taking was reasonably worth the sum of eight hundred and forty-five dollars ($845), for which no payment appears to have been made.

III. The foregoing claim was originally referred to this court under the act of March 3, 1883, and the case on June 10, 1901, was dismissed for want of prosecution. Thereafter, as hereinbefore stated, the claim was referred to this court by resolution of the United States Senate under the act of March 3, 1887.

These facts are reported as bearing upon the question whether there has been delay or laches on the part of the claimant in prosecuting his claim.

BY THE COURT.

Filed November 4, 1907.

A true copy.

Test this 24th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 332.

CHRISTOPHER ALEXANDER AND OTHERS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF CHRISTOPHER ALEXANDER AND EIGHTEEN OTHER CLAIMANTS, AS SUBNUMBERED IN THE ANNEXED FINDINGS, AGAINST THE UNITED STATES.

FEBRUARY 26, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 25, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13106 Christopher Alexander, subnumber 1; Albert O. Chamberlain, subnumber 2; David Craig, subnumber 3; William Coates, subnumber 4; Daniel H. Chattin, subnumber 6; Josephine Cramp, widow of Martin C. Cramp, deceased, subnumber 7; Thomas Denney, subnumber 8; John J. Garrity, subnumber 9; John B. Grover, jr., subnumber 10; William Lynn, subnumber 12; George W. Margerum, subnumber 13; Theodore Mitchell, subnumber 14; Thomas W. Meyers, subnumber 15; John H. Petitt, subnumber 16; Robert Pogue, subnumber 17; James Spear, subnumber 22; Edward T. Weaver, subnumber 23; Thomas R. Walters, subnumber 24; George A. Zirnberg, subnumber 25 (navy-yard, League Island, Pa.).]

STATEMENT OF CASE.

This is a claim for payment to the above-named claimants for service rendered at the United States navy-yard at League Island, Pa., above a legal day of eight hours.

On March 2, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8261, Fifty-ninth Congress, second session.]

"A BILL For the relief of Christopher Alexander and others.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Christopher Alexander and to the others who have joined with him in a petition to this Congress, dated January twenty-ninth, nineteen hundred and seven, the amounts that may be found due to each of them, respectively, for extra labor above the legal day of eight hours while employed by the United States as workmen, laborers, or mechanics at the various navy-yards of the United States, performed by them by reason of and under the provisions of circular numbered eight, issued by the Secretary of the Navy on March twenty-first, eighteen hundred and seventy-eight."

Thereafter the claimants above named, and each of them, filed their respective petitions, in which they, and each of them, aver substantially as follows:

That between March 21, 1878, and September 21, 1882, they, and each of them, were employed by the Government of the United States at the navy-yard at League Island, Pa.; that on March 21, 1878, the Secretary of the Navy issued the order referred to in the petition of the claimants and known as "Circular No. 8;" that during the six months in each year from the date of said order, to September 21, 1882, they worked during all or a portion of the time they were so employed in excess of eight hours per day, and that they, and each of them, were paid for only eight hours' work per day for the time they were so employed during said period, and that they, and each of them, are entitled to the amounts set forth in their respective petitions, being the pay for all time worked during said period in excess of eight hours per day.

The case was brought to a hearing on the evidence and merits on February 20, 1908.

Thomas Dawson appeared for the claimants, and the Attorney-General, by Percy M. Cox, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument on both sides, makes the following

FINDINGS OF FACT.

I. Between the 21st of March, 1878, and the 21st of September, 1882, the claimants, and each of them, above named, were in the employ of the United States in the navy-yard at League Island, Pa., as laborers, workmen, or mechanics, during which time the following order was in force:

Circular No. 8.

NAVY DEPARTMENT,
Washington, March 21, 1878.

The following is hereby substituted, to take effect from this date, for the circular of October 25, 1877, in relation to the working hours at the several navy-yards and shore stations:

The working hours will be, from March 21 to September 21, from 7 a. m. to 6 p. m.; from September 22 to March 20, from 7.40 a. m. to 4.30 p. m., with the usual intermission of one hour for dinner. The Department will contract for the labor of mechanics, foremen, leading men, and laborers on the basis of eight hours a day. All workmen electing to labor ten hours a day will receive a proportionate increase of their wages.

The commandants will notify the men employed or to be employed of these conditions, and they are at liberty to continue or accept employment under them or not.

R. W. THOMPSON,
Secretary of the Navy.

II. Said claimants, and each of them, while in the employ of the United States as aforesaid, worked on the average the number of hours set opposite their respective names in excess of eight hours a day at the prices below stated, to wit:

Sub No.	Name of claimant.	Number of hours in excess of 8 hours a day.	Rate per day.
1	Christopher Alexander	18 hours	$2.26
		1,286 1/12 hours	2.30
2	Albert O. Chamberlain	17 hours	1.76
		74 hours	2.00
		12 hours	1.80
3	David Craig	79 3/8 hours	3.00
4	William Coates	906 11/12 hours	3.00
		83 hours	3.26
5	Daniel H. Chattin	1,069 7/12 hours	3.00
6	Josephine Cramp, widow of Martin C. Cramp, deceased.	496 1/2 hours	3.00
7	Thomas Denney	3 1/2 hours	3.00
		57 hours	3.26
8	John J. Garrity	26 hours	.90
		267 1/4 hours	1.00
		269 1/12 hours	1.20
		241 5/8 hours	1.50
		279 3/4 hours	1.80
		136 hours	3.00
		80 hours	3.26

Sub No.	Name of claimant.	Number of hours in excess of 8 hours a day.	Rate per day.
10	John B. Grover, jr	251 hours	$0.90
		272¼ hours	1.05
		263¾ hours	1.20
		264 $\frac{4}{19}$ hours	1.50
		256 $\frac{7}{19}$ hours	1.80
		40 hours	3.00
12	William Lynn	461⅛ hours	3.00
		28 hours	3.26
13	George W. Margerum	633⅞ hours	3.00
		78 hours	3.26
14	Theodore Mitchell	638⅝ hours	3.00
		86 hours	3.26
15	Joseph W. Meyers	5 hours	3.00
16	John H. Pettit	1,123¼ hours	3.00
17	Robert Pogue	244⅛ hours	3.00
22	James Spear	1,44[illegible]⅞ hours	5.50
23	Edward T. Weaver	1,008¾ hours	3.00
		158 hours	3.50
24	Thomas R. Walters	604 hours	3.00
		52 hours	3.26
25	George A. Zirnberg	1,213⅞ hours	3.00

III. If it is considered that eight hours constituted a day's work during the period from March 21, 1878, to September 22, 1882, under the order of the Secretary of the Navy, as aforesaid, then the claimants, or their decedents, have been underpaid the sums set opposite their respective names, as follows:

Christopher Alexander, three hundred and seventy-four dollars and eighty-three cents ($374.83).

Albert O. Chamberlain, twenty-four dollars and ninety-four cents ($24.94).

David Craig, twenty-nine dollars and eighty-seven cents ($29.87).

William Coates, three hundred and seventy-three dollars and ninety-one cents ($373.91).

Daniel H. Chattin, four hundred and one dollars and nine cents ($401.09).

Josephine Cramp, widow of Martin C. Cramp, deceased, one hundred and eighty-six dollars and six cents ($186.06).

Thomas Denney, twenty-four dollars and sixty cents ($24.60).

John J. Garrity, two hundred and seventy dollars and fourteen cents ($270.14).

John B. Grover, jr., two hundred and twenty-five dollars and eighty-one cents ($225.81).

William Lynn, one hundred and eighty-four dollars and sixty cents ($184.60).

George W. Margerum, two hundred and sixty-nine dollars and forty-three cents ($269.43).

Theodore Mitchell, two hundred and seventy-four dollars and sixty cents ($274.60).

Joseph W. Meyers, one dollar and eighty-seven cents ($1.87).

John H. Pettit, four hundred and twenty-one dollars and thirty-one cents ($421.31).

Robert Pogue, ninety-one dollars and seventy-five cents ($91.75).

James Spear, nine hundred and ninety-six dollars and seventy-six cents ($996.76).

Edward T. Weaver, four hundred and forty-seven dollars and thirty-seven cents ($447.37).

Thomas R. Walters, two hundred and forty-seven dollars and sixty-nine cents ($247.69).

George A. Zirnberg, four hundred and fifty-five dollars and fifteen cents ($455.15).

IV. The claims of the several individuals hereinbefore mentioned, except the claims of John B. Grover, jr., John H. Pettit, and George A. Zirnberg, were never presented to any department or officer of the Government prior to the presentation thereof to Congress and reference to this court, as hereinbefore set forth in the statement of the case, nor is any competent evidence adduced to show why said claimants did not earlier prosecute their said claims. The claims of said John B. Grover, jr., John H. Pettit, and George A. Zirnberg were filed in this court in September, 1888, and were dismissed for want of prosecution in October, 1906. No reason is shown why said claimants did not prosecute their claims in this court to a final judgment.

By the Court.

Filed February 25, 1908.

A true copy.

Test this 25th day of February, A. D. 1908.

[SEAL.]

John Randolph,
Assistant Clerk Court of Claims

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 333.

WYNONA AMBROSE DIXON.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF WYNONA AMBROSE DIXON AGAINST THE UNITED STATES.

FEBRUARY 27, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 26, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims of the United States. Congressional, No. 10917. Wynona Ambrose Dixon v. The United States.]

STATEMENT OF CASE.

The following bill was referred to the court June 27, 1902, by resolution of the United States Senate under an act of Congress approved March 3, 1887, known as the Tucker Act:

"[S. 3511, Fifty-seventh Congress, first session.]

"A BILL For relief of Wynona A. Dixon.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That Wynona A. Dixon, of Dallas, Texas, be paid, out of any money in the Treasury of the United States not otherwise appropriated, the sum of one hundred and fifty-seven thousand nine hundred and eighty-nine dollars, in full compensation for property destroyed or taken and used by the military forces of the United States operating at and in the vicinity of Port Hudson, Louisiana, during the late civil war."

The claimant appeared and filed her petition in the court August 21, 1902, in which she makes the following allegations:

That the petitioner was born in Port Hudson, La., August 20, 1850, her parents being Stephen Ambrose, who died about the year 1858, and Priscilla A. Ambrose, who died about the year 1863, and, by reason of the death of her said parents, she

above stated, and of her sister thereafter, she became, by inheritance, the sole owner of two plantations in the vicinity of Port Hudson, La., and a large amount of personal property, including that involved in this claim.

That at the outbreak of the civil war and thereafter, during the remainder of her life, the petitioner's mother was loyal to and an outspoken sympathizer with the Union cause. She was in frequent communication with the Federal troops and, by her acts and the open expression of her sympathies, made herself extremely unpopular outside of the Federal lines. After the death of the petitioner's mother the Federal officers, knowing of her loyalty to the Union, protected the orphan girl, the petitioner, and sent her to New Orleans, where she was placed in the care of her brother-in-law, Dr. Madison Marsh, who was loyal to the Union and a refugee from Port Hudson, La.

That after the capture of Port Hudson by the Federal troops the petitioner returned to her homestead and remained there until the end of the war. Upon her said return she discovered that all the movable property left by her on the premises was missing, and learned that it, including that covered by this claim, had been destroyed or taken away and appropriated to the use of the United States Government by the troops under command of Gen. N. P. Banks, in command of the Federal forces. The following is a schedule of the property taken:

300 bales of cotton, 450 pounds, 135,000 pounds, at $1	$135,000
3,000 bushels sweet potatoes, at 50 cents	1,500
3,000 bushels corn, at $1	3,000
10 barrels sugar	600
10 barrels molasses	200
2 barrels sirup	60
30 mules, at $150	4,500
5 brood mares, at $100	500
Horses and carriages	500
40 fattening hogs, at $25	1,000
100 range hogs, at $10	1,000
50 milch cows, at $25	1,250
100 dry cows, at $10	1,000
40 beeves, at $20	800
6 yokes of work steers, at $100	600
60 goats, at $2.50	150
200 head of sheep, at $3.50	700
Sundry poultry	100
Buggy	150
10 wagons, at $100	1,000
Farm implements	250
30 barrels pickled pork	600
2,000 pounds dry-salt meat	200
Bacon and hams	200
1 grist mill	1,200
8 feather beds, 240 pounds	240
16 feather pillows	24
8 wool mattresses, at $20	160
30 quilts	60
15 pairs blankets	45
Sundry bedding	50
Household and kitchen furniture	1,000
Sundry wearing apparel	350
Total	157,989

The case was brought to a hearing on loyalty and merits on the 15th day of January, 1908.

Messrs. Dudley & Michener appeared for the claimant, and the Attorney-General, by F. DeC. Faust, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. During the late civil war Priscilla A. Ambrose, mother of the claimant herein, resided on her plantation near Port Hudson, La. On May 27, 1863, said Priscilla A. Ambrose died, leaving surviving her the following-named children, viz: Sarah Jane

Marsh (nee Ambrose), William Bradford Ambrose; the claimant herein, Wynona Ambrose Dixon.

Said Sarah Jane Ambrose died in 1874 without issue. William Ambrose died in 1877 without living issue. Wynona Ambrose, who married John W. Dixon in 1868, is the only surviving heir of her said mother, Priscilla A. Ambrose, and is the sole claimant herein.

II. Said Priscilla A. Ambrose and her son, William Bradford Ambrose, were not loyal to the Government of the United States during the late civil war.

The said Sarah Jane Ambrose-Marsh and said Wynona Ambrose Dixon were loyal to the Government of the United States throughout the late civil war.

III. Prior to May 23, 1863, there were taken by the military forces of the United States under the command of General Banks from the plantation of Priscilla A. Ambrose, known as the Bradford plantation, situate outside of the Confederate fortifications at Port Hudson, La., about 300 bales of cotton, which were used in constructing fortifications and breastworks by the said army for defensive operations in the siege of Port Hudson. What became of said cotton after the siege does not appear, nor does it appear whether said cotton was seized by a Treasury agent and sold and the proceeds thereof turned into the Treasury of the United States.

IV. During said civil war and during the siege of said Port Hudson, and after the death of said Priscilla A. Ambrose, there was taken from her said plantation property of the character and kind described in the petition other than cotton, which property was then and there of the reasonable value of eleven thousand five hundred dollars ($11,500), which sum represents the interest of said three children, one of whom, William Bradford Ambrose, whose interest was one-third, or thirty-eight hundred and thirty-three dollars and thirty-three cents ($3,833.33), is found not to have been loyal to the Government of the United States; and if said one-third be deducted, the remaining two-thirds, or seven thousand six hundred and sixty-six dollars and sixty-seven cents ($7,666.67), is the interest of the claimant herein in her own right and in the right of her sister, Mrs. Sarah Jane Ambrose Marsh, whose interest she inherits (said latter two having been found loyal, as aforesaid), no part of which appears to have been paid.

V. The foregoing claim was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as aforesaid, and no reason is given why the bar of any statute of limitations should be removed or which shall excuse claimant for not having resorted to any established legal remedy.

By the Court.

Filed February 10, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 334.

TRUSTEES OF ANDREW CHAPEL, METHODIST EPISCOPAL CHURCH SOUTH, FAIRFAX COUNTY, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF ANDREW CHAPEL, METHODIST EPISCOPAL CHURCH SOUTH, OF FAIRFAX COUNTY, VA., AGAINST THE UNITED STATES.

FEBRUARY 27, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 26, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12424. Trustees, Andrew Chapel, Methodist Episcopal Church South, of Fairfax County, Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and injury to a church building by the military forces of the United States during the late civil war. On the 13th day ot June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 2591, Fifty-ninth Congress, First session.]

"A BILL For the relief of the trustees of Andrew Chapel, Methodist Episcopal Church South, of Fairfax County, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Trustees of Andrew Chapel, Methodist Episcopal Church South, of Fairfax County, Virginia, the sum of one thousand dollars for use of and damage to their church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 31st day of October, 1907, and filed their petition, in which it is substantially averred:

That during the winter of 1862 and 1863 the military forces of the United States, consisting of the Sixth Michigan Cavalry and other organizations, took possession of the church building of Andrew Chapel, Methodist Episcopal Church South, of Fairfax County, Va., and used and occupied same for quarters. That during said occupation all of the furniture and fixtures were destroyed, nearly all of the flooring was burnt out, and the walls were badly defaced. That the reasonable rental value of said building during the period it was so occupied, including the repairs necessary to restore the building to the condition in which it was at the time the said military forces took possession, was the sum of $1,000, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by P. M. Cox, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Andrew Chapel Methodist Episcopal Church South, of Fairfax County, Va., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of said church building described in the petition and used the same for quarters and damaged the same. Said use and occupation, together with the damages in excess of ordinary wear and tear, was then and there reasonably worth the sum of four hundred and fifty dollars ($450), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore mentioned, and no reason is given why the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 10, 1908.
A true copy.
Test this 25th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 335.

TRUSTEES OF JERUSALEM BAPTIST CHURCH AND VESTRY OF ZION PROTESTANT EPISCOPAL CHURCH, FAIRFAX, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE JERUSALEM BAPTIST CHURCH AND THE VESTRY OF ZION PROTESTANT EPISCOPAL CHURCH, OF FAIRFAX COUNTY, VA., AGAINST THE UNITED STATES.

FEBRUARY 27, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 26, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12983. Trustees of the Jerusalem Baptist Church and the vestry of Zion Protestant Episcopal Church of Fairfax Court-House, Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and tearing down of building and taking and use of its materials by the military forces of the United States during the civil war. On the second day of March, 1907, the United States Senate referred to the Court a bill in the following words:

" [S. 6888, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Jerusalem Baptist Church and the vestry of Zion Protestant Episcopal Church, of Fairfax Court-House, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Jerusalem Baptist Church, and the vestry of the Zion Protestant Episcopal Church, of Fairfax Court House, Virginia, the sum of seven thousand dollars, in full compensation for occupation and complete destruction of the building known as Paynes Church, they jointly owned by the churches above named, by United States military forces during the civil war."

The trustees and vestry of said churches, respectively, appeared in this court April 10, 1907, and filed their petition, in which it is substantially averred that:

During the civil war the military authorities of the United States took possession of the church building of the claimants, and that said church, a fine historic building, constructed by a building committee of which Gen. George Washington and Lord Fairfax were members, being 40 by 60 feet in size, of fine architecture, gothic windows, decorated walls, aisles of broad stone, and walls of exceptional thickness,

was entirely torn down by the Federal military forces and the brick from said building used to construct camp chimneys at Fairfax Station and other places near by; that the fence was also destroyed; that the reasonable value of said property, including the repairs necessary to restore said property to the same condition as before said occupation, was the sum of $7,000, for which no payment has been made; that the claimants have at all times borne true allegiance to the Government of the United States, and have not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

Coldren & Fenning appeared for the claimants, and the Attorney-General, by W. H. Lamar, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of council on both sides, makes the following

FINDINGS OF FACT.

I. The Jerusalem Baptist Church and the Zion Protestant Episcopal Church, of Fairfax Court House, Va., as organizations, were loyal to the Government of the United States throughout the civil war.

II. During said period the United States military forces, by proper authority, for the use of the Army, took possession of the church building near Fairfax Court House, Va., known as Payne's Church, and tore down the same and used the materials therein contained in the erection of quarters and chimneys for troops. The reasonable value of the building at the time of its destruction was the sum of fifteen hundred dollars ($1,500), no part of which appears to have been paid.

Said Payne's Church was erected by the vestry of Truro Parish, Virginia, of the Church of England, for the use of the people of that church who afterwards became the Protestant Episcopal Congregation of the northwest portion of Truro Parish. It was erected on land owned by one of the members of said vestry, with the permission of the said owner, but no deed or conveyance of said land appears to have been made by said owner or his heirs or devisees, then or since. After the revolution, the Episcopalian Congregation being reduced in numbers, there was but little if any use of the church building for services until early in the nineteenth century, when a Baptist congregation of the vicinity began holding services therein, and said Baptist congregation, which, ever since about 1840, has been known as the Jerusalem Baptist Church, continued to hold services therein and maintain it as a house of worship continuously until the building was torn down by United States military forces and its materials used in their camps in 1862. After the civil war the said Jerusalem Baptist Church erected a new church building upon the same lot on which Payne's Church stood, and continues now to occupy the same.

The Zion Protestant Episcopal Church, of Fairfax Court House, Va., is the church and the only church of that denomination supplying the northwest portion of said Truro Parish, which parish is still in existence, and a portion of its congregation consists of descendents of the congregation which originally worshipped in Payne's Church, and for whom the building was erected. On January 24, 1779, and January 2, 1802, the legislature of Virginia passed enactments declaring that all property belonging to the Church of England in that State devolved on the people of the Commonwealth on the dissolution of the British Government in said State, and gave authority for the sale of all such property through the overseers of the poor of the several counties of said State. Said act still remains in force, but no attempt has ever been made to take or sell the land on which this church was located under the provision of said act. The said two churches, the Jerusalem Baptist Church and the Zion Protestant Episcopal Church, of Fairfax Court House, Va., through their proper officers, have entered into amicable understanding and agreement in writing to divide the proceeds of this claim equally between the said two church organizations.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore stated in the statement of the case, and no reason is given why the bar of any statute of limitations should be waived or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 336.

COMMISSIONERS OF JUDAH TOURO ALMSHOUSE FUND, NEW ORLEANS, LA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE BOARD OF COMMISSIONERS OF THE JUDAH TOURO ALMSHOUSE FUND OF NEW ORLEANS, ORLEANS PARISH, LA., AGAINST THE UNITED STATES.

FEBRUARY 27, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 26, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12532. The Board of Commissioners of the Judah Touro Almshouse Fund, of New Orleans, La., v. The United States.]

STATEMENT OF CASE.

This is a claim for the use and occupation of and damage to the property of an endowed charitable institution by the military forces of the United States during the war for the suppression of the rebellion. On the 12th day of June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 1219, Fifty-ninth Congress, first session.]

"A BILL For the relief of the Board of Commissioners of Judah Touro Almshouse, of New Orleans, Orleans Parish, Louisiana.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the board of commissioners of the Judah Touro Almshouse, of New Orleans, Orleans Parish, Louisiana, the sum of two hundred and eighty-one thousand five hundred and eighty-five dollars, in full compensation for the use and destruction of its buildings and other property by the United States troops during the civil war."

The claimant, the Board of Commissioners of the Judah Touro Almshouse Fund, appeared in this court on the 11th day of July, 1906, and filed their petition, in which it is substantially averred that—

By the will of the late Judah Touro, who died in New Orleans, La., on June 18, 1854, a fund was left in trust for the purpose of establishing in the city of New Orleans an almshouse for the relief of the poor and aged. With additional donations said fund was increased to about $200,000, and was placed under the control of a board of directors incorporated by the legislature of Louisiana.

A site for the building of the almshouse was donated, valued at $50,000, and on February 22, 1858, the directors commenced the work of constructing the same. The building was substantially completed in the early part of 1862. It was a three-story structure of superior style and materials, and at the time stated the sum of $190,000 had been expended in cash by the said directors and a further indebtedness of $16,000 incurred.

During the month of April, 1862, said building and premises were occupied for military purposes by the United States troops, and were so exclusively used and occupied from that time continuously until the 31st day of August, 1865, when the building was destroyed by fire through the gross negligence of the military authorities in charge.

That claimant is entitled to recover the rental value of said land and premises during the period they were so occupied, and also to recover compensation for the value of the building so destroyed, as follows:

Rent from April, 1862, to August 31, 1865	$81,585
Value of buildings destroyed	206,000
Total	287,585

On account of the total destruction of said almshouse the trusts declared in the will of said Judah Touro became incapable of execution, so that on March 23, 1867, the legislature of Louisiana passed an act for the relief of the said directors, winding up the affairs of said institution and directing that the balance of the funds on hand, then amounting to $7,575.13, be turned over to the mayor and council of the city of New Orleans, to hold upon the same trusts as declared in said will; that thereafter and until the creation of the Board of Commissioners of the Judah Touro Almshouse Fund by act of July 8, 1902, there was no person competent or authorized to prosecute this claim; that since its incorporation on the latter date, the petitioner has made diligent efforts in the prosecution of this case.

The case was brought to a hearing on loyalty and merits on October 5, 1907.

Ralston & Siddons appeared for the claimant, and the Attorney-General, by F. DeC. Faust, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. It appears from the evidence that the claimant corporation was loyal to the Government of the United States throughout the late civil war.

II. The late Judah Touro, by will dated January 6, 1854, bequeathed a fund of $80,000 to his executors in trust as an endowment and for the construction of an almshouse in the city of New Orleans, La., for the purpose of contributing, so far as possible, to the prevention of mendicity in the city. The fund so created was subsequently largely increased by other private donations of property and money.

III. By act of the legislature of the State of Louisiana (No. 134 of 1855) to incorporate the Touro Almshouse the executors under said will, together with the mayor of New Orleans, were made perpetual directors, and with two other directors to be elected annually by the city council were charged with the execution of said trust.

IV. The directors of said institution proceeded in the year 1858 to erect an almshouse building upon certain land, a city block fronting on the levee, which had been donated for the purpose. Plans were adopted and in the following year the structural work was commenced. This work was continued until the spring of the year 1862.

V. In August, 1862, after the occupation of the city of New Orleans by the Federal forces, said buildings were designated by official order of General Butler as mustering headquarters for native guards and were used for that purpose.

At the time of said occupation by the military authorities of the United States *said buildings* were in an unfinished condition—the roof on the left wing of the main

building, the towers in front toward the river, and the roof on the rear building were uncovered and no doors or window sash were in either of said buildings.

On January 15, 1864, said buildings were used by the United States military authorities as a recruiting depot for the Corps d'Afrique; a new slate roof was put over the whole building, new floors were laid on each story, and wooden partitions, doors, and window sashes were put in. There were also bunks, gun racks, kitchens, and other necessary improvements, at a total approximated cost to the United States of $49,000. What part of said $49,000 was expended for completing and improving said building and what part for bunks, gun racks, kitchens, etc., does not appear.

VI. On the night of September 1, 1865, while in possession of said military authorities, said almshouse was destroyed by fire. By special order of Maj. Gen. E. R. S. Camby, Headquarters Department of Louisiana, dated New Orleans, September 6, 1865, a board, consisting of three army officers, was appointed, and met in that city on September 10, 1865, to investigate and report the circumstances connected with the burning of said almshouse.

Eighteen witnesses were examined under oath, consisting of Capt. C. M. Smiley, of the Eighty-first United States Colored Infantry, stationed in the buildings at that time; Lieutenant Roberts, Ninety-second United States Colored Infantry, acting assistant quartermaster, in charge of said buildings when burned; Lieutenant Newman, Eighty-first United States Colored Infantry; Sergeant Alexander and Corporal Moore of the guard on the night in question, four other noncommissioned officers, one company cook, one private; Lieutenant Letten and Private Crowley, of the New Orleans police force; Ballinger, chief engineer of the New Orleans fire department; W. A. Freret, architect, formerly in charge of plans and superintendence of buildings prior to said military occupation; James Freret, draftsman; one practical bricklayer, and clerk to the assistant quartermaster.

The report of the board is as follows:

"The board appointed by Special Orders, No. 50, Headquarters Department of Louisiana, September 6, 1865, respectfully submit the following report of the circumstances connected with the burning of the Touro Almshouse on the night of September 1, 1865:

"It appears from the testimony that a fire was discovered in the third story of the right wing of the Touro Almshouse on the night of September 1, 1865, by Policeman John Crowley, of the third district police, at about twenty minutes before 11 o'clock p. m. Crowley repaired at once to the main entrance of the building on Levee street, and having ascertained that no troops were quartered in that story, told the sergeant of the guard that the building was on fire. Policeman Crowley gave the general alarm about five minutes before 11 o'clock p. m. The building at this time was occupied by detachments of the Second Maine Cavalry and Company K, First Louisiana Cavalry, numbering in all 53 men.

"Company B, Eighty-first United States Colored Infantry, Capt. C. H. Smiley and First Lieut. S. A. Newman were on duty at the Touro Almshouse on September 1, 1865.

"It appears from the testimony of Captain Smiley, Eighty-first United States Colored Infantry, that about half past 10 o'clock p. m., on the night of September 1, 1865, one of the guards (Private Caston, Company B, Eighty-first United States Colored Infantry) came to his quarters in a hurried manner and said a policeman was at the gate and wished to see him; that he hastened to the gate, where the sergeant of the guard told him the policeman had gone up the street; that he met Policeman Crowley on Piety street, who told him there was a fire in the building and pointed to a window on the third story of the right wing, facing toward Piety street, through which a fire could be seen on the opposite wall and under the roof. It appeared to be one of the rafters burning.

"Captain Smiley at once aroused his company and the detachments of cavalry, informed them where the fire was, and ordered the men to fill buckets with water and assist to extinguish the flames. Procuring the water he proceeded with a squad of men to the third story by a stairway in the left wing. There was no flooring on the third story of the right wing. The place where the fire was could only be reached by walking on the floor sleepers. This Captain Smiley attempted, but as the night was very dark and a high wind prevailing the lights borne by the men were extinguished, and the attempt to reach the fire by the floor sleepers was abandoned. There were no ladders in or about the building. It is the opinion of Captain Smiley that if the fire could have been reached at this time it might have been extinguished with two buckets of water. Lieutenant Newman coincides with this opinion.

"It appears from the testimony that the walls of the first and second stories of the building were covered with tar for a distance of 5 or 6 feet from the floor, and that sparks of coals dropping from the burning rafters upon the walls and igniting the tar

caused the fire to spread with great rapidity through the entire second story. The first fire company arrived on the ground about three-quarters of an hour after the discovery of the fire. It appears that when the fire companies first arrived the cry of 'powder' was raised, which created a general panic, so that the firemen left their engines and did not return to work until it was too late to render any service in staying the progress of the fire.

"It is the opinion of the chief engineer of the fire department that but for the panic created by the cry of powder the fire would have been extinguished.

"The testimony shows clearly (and in view of the premises) that the fire originated at a point designated upon the accompanying plan where a ventilator or impure-air flue passes through the roof, and by the side of which is anchored a floor sleeper. It was this floor sleeper or rafter that was discovered to be on fire.

"The testimony of Private M. W. Plumley, Company K, First Louisiana Cavalry, is to the effect that when the fire was first discovered he went up to the third story of the building and saw that it was the rafters next to the flue that were burning, and that a blue flame was issuing out of what appeared to be an open joint in the flue.

"The cooking for the troops quartered in the Touro Almshouse was performed in the right wing of the building, on the side next to Piety street. On the opposite side of the right wing, near the angle of the wing and main building, a large bake oven was constructed June, 1864, under the orders of Lieut. G. H. Roberts, acting assistant quartermaster. It was used for baking purposes until about April 1, 1865, the date of discontinuing the volunteer recruiting service. This oven was oval inside and measured 12 bv 12 feet outside. It was built against the ventilator (shown in the accompanying drawing), and a raise on the outside conveyed the smoke into the ventilator used as a chimney. No fires were ever used in any other part of the building.

"It appears that this bake oven was used on the afternoon of September 1, 1865, by the cooks of the detachment of the Second Maine Cavalry to bake beans, and Private Plumley testifies that he heard enlisted men say 'that sparks were coming out of the place in the flue near the roof, and if they were not careful they would set the building on fire.' It further appears that during the conflagration men of the detachment of the Second Maine Cavalry were heard to say that 'the baked beans had fired the building.'

"It was over the ventilator or impure-air flue, used as a chimney to carry the smoke from the bake oven, that Private Plumley discovered a blue flame issuing in the third story, directly under the roof of the building, and where all the witnesses testify they first saw the fire.

"At an inspection of the interior facing of the left wall of the right wing a fissure in the ventilator used as a chimney to the bakehouse may be seen, from about three-fourths of an inch to 1 inch in width, extending from near the top of the ventilator downward about 3 feet. The ventilator is 9 inches in diameter, and where it went through the roof was 4 inches thick on the side toward the interior of the building.

"It appears from the testimony of Mr. William A. Freret, an architect by profession, who had charge of the plans and superintendence of the construction of the Touro Almshouse, that it was never the intention to heat the building save by steam; consequently there were no fireplaces nor chimneys in the main building, but there was a separate building in the rear of the main building intended for the culinary department of the institution. His testimony shows that the use of these air flues as fire flues when not intended as such was detrimental to the safety of the building, because the construction of the flues necessary for the escape of impure air (as called for in specification) is different from the mode of construction when prepared for fire flues.

"He further says: 'I consider the employment of impure-air flues as fire flues, if not culpable, the result of ignorance, more especially the use of an impure-air flue to convey smoke from a bake oven of this size (12 by 12 feet).'

"The use of any flue of the small dimension of 9 inches square, no matter how constructed, would have been dangerous as a fire flue for a fire of such size. The accumulation of soot would render it so. The flue would have been liable to burst.

"The testimony shows that no citizen had been seen in or about the building on the day of the fire. Sentinels were posted in the right and left wings of the main building.

"It would seem impossible for a person to enter the building without being seen by the guard. Standing instructions were to send a patrol through the buildings and grounds every night.

"It appears that every effort was made by officers, soldiers, and citizens to extinguish the fire, and but for the panic created by the cry of 'powder' their efforts would have been successful.

"From the testimony adduced the board are of the opinion that the burning of the Touro Almshouse on the night of September 1, 1865, was occasioned by a fissure in the ventilator, the impure-air flue used as a chimney for the bake oven erected in the right wing of the building, through which fire was communicated to the rafters.

"HENRY W. FULLER,
"*Colonel Seventy-fifth United States Colored Infantry.*
"ANDREW C. FITZ,
"*Captain Eighty-first United States Colored Infantry.*
"THOS. KANADY,
"*Captain First New Orleans Volunteer Infantry.*"

VII. The land upon which said buildings were erected was valued by its donor at the date of its donation in May, 1855, at $50,000. The invitations for plans, drawings, and estimates issued by the building committee limited the expenditure on said building at $125,000. What portion of this amount had actually been expended by the trustees in the construction of said unfinished building does not appear.

VIII. On March 23, 1867, the legislature of the State of Louisiana passed an act (No. 100 of 1867) for the relief of the directors of the Touro Almshouse, reciting the fact that they had expended a large sum of money in the erection of suitable buildings for said institution; that said buildings, being in an unfinished condition, were taken possession of by the United States military authorities and used for military purposes, and while in their possession were entirely consumed by fire, in consequence of which large expenditures and total loss the trusts can not now be carried into effect. The act then provided that the directors may transfer to the authorities of the city of New Orleans all money and property belonging to the Touro Almshouse, which shall be used only for the purposes directed by said testator, to be assumed by the city in the act of transfer. The city council by ordinance accepted the transfer upon the terms stated in the act.

IX. On November 3, 1882, the city council by ordinance transferred the funds remaining from said endowment ($7,575.13) to the Touro-Shakespeare Almshouse, then being erected.

X. The present claimant, the Board of Commissioners of the Judah Touro Almshouse Fund, was created by act of the Louisiana legislature, passed July 8, 1902, for the purpose of collecting all moneys due to the endowment fund originating under the Touro will. Such moneys as are received are to be immediately transferred to the Touro-Shakespeare Almshouse.

XI. The reasonable rental value of said property during said period of occupation was the sum of twenty-one thousand dollars ($21,000), or twenty-eight thousand dollars ($28,000) less than the Government had expended thereon in the completion and repair of said building as aforesaid.

The reasonable value of said building, including the expenditures so made by the Government, as aforesaid, was at the time of the destruction ninety-four thousand four hundred dollars ($94,400), which said sum of ninety-four thousand four hundred dollars represents the rental value and the destruction of the said building, no part of which appears to have been paid.

XII. No demand was made at any time for payment of this claim against the United States after the destruction of said buildings on September 1, 1865, until the year 1902, when the same was presented to Congress and referred to this court by resolution of the United States Senate, as hereinbefore set forth; nor is any reason shown why the same was not sooner presented; but in accordance with the resolution of the Senate of the United States dated December 19, 1871, the Secretary of War transmitted on February 12, 1872, to the Senate reports of his investigation furnishing the desired information.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 339.

UNIVERSITY OF NASHVILLE, OF NASHVILLE, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE UNIVERSITY OF NASHVILLE, TENN., AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13135. University of Nashville, of Nashville, Tenn., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation, alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8484, Fifty-ninth Congress, second session.]

"A BILL For the relief of the University of Nashville, of Nashville, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the treasurer of the University of Nashville, of Nashville, Tennessee, the sum of thirteen thousand dollars, in full compensation for the occupation, use, and incidental injury to the property of said University by United States military forces during the civil war."

The said university appeared in this court March 23, 1907, and filed its petition, in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the property of the University of Nashville, of Nashville, Tenn., consisting of very large, extensive, and expensive buildings, one building being of stone, two stories in height, 150 feet long by 50 feet wide; another building of brick, 150 feet

long by 50 feet wide, having three stories and about 65 rooms; another of brick, about 100 feet by 30 feet in size, of two stories, and 20 acres of highly improved ground, and occupied the same, as shown by records of the institution, February 12, 1862, and continuously from that time until September 11, 1865, for military purposes, when said property, except one of said buildings, was vacated; that General Thomas's division of the Army encamped on said grounds and adjoining grounds in September, 1862, and the grounds were used for drill purposes extensively; that, resulting from said occupation, the property was very greatly injured, trees cut down, fences destroyed, etc.; that the reasonable rental value of said property during such occupation, in building the repairs necessary to restore the said property to the same condition in which it was before such occupation, was the sum of $15,000, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 19th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by George E. Boren, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The University of Nashville, of Nashville, Tenn., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period, from about February 12, 1862, to about September 11, 1865, the military forces of the United States, by proper authority, for the use of the Army, occupied and used the buildings and grounds of the claimant institution, and damaged the same. The reasonable rental value, together with the damages occasioned by said occupation in addition to ordinary wear and tear, was then and there the sum of seven thousand and three hundred dollars ($7,300), no part of which appears to have been paid.

III. The foregoing claim was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not earlier presented.

NOTE.—Howry, J., not being present on account of illness, took no part in the making up of these findings.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 340.

HEIRS OF OLIVER MILBOURN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF RALPH MILBOURN, LOUISE V. MILBOURN, AND HENRY W. MILBOURN, SOLE HEIRS OF OLIVER MILBOURN, DECEASED, AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12795. Ruth Milbourn, Louise V. Milbourn, and Henry W. Milbourn, sole heirs of estate of Oliver Milbourn, deceased, v. The United States.]

STATEMENT OF CASE.

This is a claim for property alleged to have been taken by or furnished to the military forces of the United States during the late civil war.

The claim was first referred to the court by the Committee on War Claims of the House of Representatives March 11, 1902, and on March 1, 1907, on the defendant's motion therefor, dismissed for want of prosecution.

Thereafter the claim was referred to the court March 2, 1907, by resolution of the United States Senate, by a bill in the following words:

"[S. 1333, Fifty-ninth Congress, first session.]

"A BILL For the relief of the estate of Oliver Milbourn, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the estate of Oliver Milburn, deceased, late of Jefferson County, West Virginia, the sum of two thousand five hundred and sixty-three dollars, for stores and supplies taken by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 24th day of August, 1907, and filed their petition, in which it is substantially averred:

That they are the children and sole heirs of Oliver Milbourn, deceased, and reside in Berkeley County, State of West Virginia; that during the late civil war the said Oliver Milbourn resided in Jefferson County, W. Va.; and that during said period there was taken from him by the military forces of the United States, by proper authority, and appropriated to the use of the Army, property of the kind and value as follows:

100 bushels of oats, at 75 cents	$75
10 head of cattle, 2,500 pounds, at 15 cents	375
47 hogs, 150 pounds each, 7,000 pounds, at 12½ cents	875
14 tons of hay, at $20	280
100 bushels of potatoes, at $2	200
48 bushels of corn, at $1	48
30 bushels of wheat, at $2	60
2 horses, at $200	400
250 bushels of corn, at $1	250
Total	2,563

(Taken by General Sheridan's command August 23, 24, and 25, 1864.)

The case was brought to a hearing on loyalty and merits on the 10th day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimants' decedent, Oliver Milbourn, was loyal to the Government of the United States throughout the late civil war.

II. During said period there was taken from the claimants' decedent in Jefferson County, W. Va., by the military forces of the United States, by proper authority, for the use of the Army, property of the kind and character described in the petition which at the time and place of taking was reasonably worth the sum of four hundred and thirty dollars ($430), no part of which appears to have been paid.

III. The claim herein was presented to the Quartermaster-General and by him disallowed on the ground of insufficiency of proof.

Thereafter the claim was referred to the court by the Committee on War Claims of the House of Representatives, March 11, 1902, and dismissed on the defendant's motion therefor for want of prosecution.

On March 2, 1907, the United States Senate, by resolution, referred the case to the court under the provisions of the act of March 3, 1887, as hereinbefore set forth in the statement of the case.

No other evidence is adduced respecting the presentation and prosecution of the claim.

BY THE COURT.

Filed February 17, 1908.

A true copy.

Test this 26th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 341.

ANTIOCH METHODIST EPISCOPAL CHURCH SOUTH, OF STEWART, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE ANTIOCH METHODIST EPISCOPAL CHURCH SOUTH, OF STEWART, MERCER COUNTY, KY., AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13021. The Antioch Methodist Episcopal Church South, of Stewart, Mercer County, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7132, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Antioch Methodist Episcopal Church South, of Stewart, Mercer County, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Antioch Methodist Episcopal Church South, of Stewart, Mercer County, Kentucky, the sum of five hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court on the 22d day of March, 1907, and filed their petition, in which it is substantially averred—

That during the late civil war the military authorities of the United States took possession of the Antioch Methodist Episcopal Church South, of Stewart, Ky., con-

sisting of a well-constructed frame church building, and occupied the same from the date of the battle of Perryville, Ky., October 8, 1862, until March or April, 1863, as a hospital; that all the pews in said church were destroyed and the property otherwise greatly injured thereby; that the reasonable rental value of said property during such occupation, including the repairs necessary to restore said property to the same condition as before such occupation, was the sum of $500, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Antioch Methodist Episcopal Church South, of Stewart, Mercer County, Ky., as a church was loyal to the Government of the United States.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used the same for hospital purposes for a short period of time and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was then and there the sum of two hundred and forty dollars ($240), no part of which appears to have been paid.

III. The claim herein was never presented to any department or officer of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not earlier prosecuted.

Howry, J., not being present on account of illness, took no part in the making up of these findings.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 342.

PRESBYTERIAN CHURCH OF PERRYVILLE, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF PRESBYTERIAN CHURCH OF PERRYVILLE, KY., AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12998. The Presbyterian Church of Perryville, Ky., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7031, Fifty-ninth Congress, second session.]

A BILL For the relief of the session of the Presbyterian Church of Perryville, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the session of the Presbyterian Church of Perryville, Kentucky, the sum of one thousand dollars, in full compensation for the occupation, use, and incidental injury to said church, by military forces of the United States during the civil war."

The said trustees of said church appeared in this court March 22, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war the military authorities of the United States occupied the property of this claimant, consisting of a brick church building, as a hospital from directly after the battle of Perryville, Ky., October 8, 1862, until March or April, 1863, that all the pews were taken out and destroyed; that the reasonable rental value of said property during said period, including the repairs necessary to restore said prop-

erty to the same condition as before such occupation, was the sum of $1,000, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on the 10th day of February, 1908, on loyalty and merits.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by W. W. Scott, esq., appeared for the defense and protection of the interests of the United States.

Howry, J., not being present on account of illness, took no part in making up these findings.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Presbyterian Church of Perryville, Ky., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States by proper authority took possession of the church building described in the petition and used and occupied the same for hospital purposes for a short period of time and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was then and there the sum of three hundred and twenty-five dollars ($325), no part of which seems to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate hereinbefore set forth in the statement of the case, and no satisfactory reason is adduced showing why the claim was not earlier prosecuted.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 343.

FIRST CHRISTIAN CHURCH, SPRINGFIELD, MO.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE FIRST CHRISTIAN CHURCH OF SPRINGFIELD, MO., AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13160. The First Christian Church of Springfield, Mo., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8593, Fifty-ninth Congress, second session.]

"A BILL For the relief of the First Christian Church of Springfield, Missouri.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the First Christian Church of Springfield, Missouri, the sum of one thousand one hundred dollars, in full compensation for the occupation, use, and incidental injury to the property of said church by the United States military forces during the civil war."

The said trustees of said church appeared in this court March 25, 1907, and filed their petition in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the building and grounds of the First Christian Church, of Springfield, Mo., consisting of a well-constructed frame building about 35 by 40 feet in size on College street, Springfield, and occupied it for a long period, the property being

greatly injured thereby; that the reasonable rental value of such property during said occupation, including the repairs necessary to restore the property to the same condition as before such occupation, was the sum of $1,100, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 10th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by W. W. Scott, esq., appeared for the defense and protection of the interests of the United States.

Howry, J., not being present on account of illness, took no part in the making up of these findings.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants except the report of the Treasury Department relative to a payment for rent and damages, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The First Christian Church, of Springfield, Mo., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said period, and prior to the battle of Wilsons Creek, in Springfield, Mo., the church building described in the petition was used and occupied by the military forces of the United States and by the Confederate forces, and the building was damaged, but to what extent by both or either of said forces is not disclosed by the testimony.

After the battle of Wilsons Creek the military forces of the United States, under the command of General Sigel, took possession of said building and used and occupied the same for hospital purposes for a period of sixteen months, for which they were paid rent in the sum of $160. The claim for damages presented at the same time was disallowed. The damage to said church building by the occupancy by said forces of the United States during said period of sixteen months was reasonably worth the sum of two hundred and seventy-five dollars ($275), no part of which latter sum appears to have been paid.

III. The claimant church herein presented a claim to the War Department for rent and damages, when $160 was, on April 8, 1874, allowed for rent, the claim for damages being disallowed. Thereafter the claim was presented to the Fifty-ninth Congress and was, on March 2, 1907, by resolution of the United States Senate, referred to this court, as hereinbefore set forth in the statement of the case, and no other satisfactory evidence is adduced as to why the same was not earlier presented.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 344.

TRUSTEES OF BAPTIST CHURCH, GALLIPOLIS, OHIO.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE BAPTIST CHURCH OF GALLIPOLIS, OHIO, AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13049. Trustees of the Baptist Church of Gallipolis, Ohio, *v* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7332, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Baptist Church at Gallipolis, Ohio.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Baptist Church at Gallipolis, Ohio, the sum of one thousand five hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court March 23, 1907, and filed their petition, in which it is substantially averred—

That during the late civil war the military authorities of the United States took possession of the property of the Baptist Church, of Gallipolis, Ohio, consisting of a large, well-constructed brick church, with basement, and occupied the same as a hospital, and the basement as quarters and for camping purposes, for the period of nearly one year; that a claim was filed in the Quartermaster-General's office on account of said

rent and occupation, but it is not known that any allowance or payment was made on account of same; that the reasonable rental value of said property, during said occupation, including the repairs necessary to restore said property to the same condition in which it was before such occupation, was the sum of $1,500, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by Clark McKercher, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none having been adduced by the defendants except the reports of the War and Treasury Departments relative to a claim for rent and damages, and after considering the briefs and arguments of counsel on each side, makes the following

FINDINGS OF FACT.

I. The Baptist Church, of Gallipolis, Ohio, as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same as a hospital and damaged the same. The reasonable rental value of such use and occupation, together with the damages thereto in excess of ordinary wear and tear, was then and there the sum of one hundred and seventy-five dollars ($175), no part of which appears to have been paid.

III. A claim for rent, damages, and coal was heretofore presented to the Quartermaster-General's office by the claimant church, and the sum of $16 was allowed for coal and paid claimant on the 26th day of April, 1867, and the claim for rent and damages disallowed. Thereafter the said claim was presented to the Fifty-ninth Congress and referred to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no other satisfactory evidence is adduced showing why the claim was not presented earlier.

Howry, J., not being present on account of illness, took no part in making up these findings.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 345.

TRUSTEES OF FIRST PRESBYTERIAN CHURCH, DANVILLE, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE FIRST PRESBYTERIAN CHURCH, OF DANVILLE, KY., AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13066. Trustees of the First Presbyterian Church of Danville, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"A BILL For the relief of the trustees of the First Presbyterian Church of Danville, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the First Presbyterian Church of Danville, Kentucky, the sum of one thousand two hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court March 23, 1907, and filed their petition, in which it is substantially averred—

That during the late civil war the military authorities of the United States took possession of the property of the First Presbyterian Church, of Danville, Ky., consisting of a very large, handsome, finely constructed brick church building, about 75 by 60 feet in size, with extensive galleries, and occupied it throughout as a hospital directly

after the battle of Perryville, Ky., October 8, 1862, and for a long time thereafter, the property thereby being greatly injured; that the reasonable rental value of said property during such occupation, including the repairs necessary to restore said property to the same condition after such occupation, was the sum of $1,200, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 11th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

Howry, J., not being present on account of illness, took no part in making up these findings.

The court, upon the evidence adduced by the claimant, none having been adduced by the defendants, and after considering the briefs and argument of counsel on each side, makes the following

FINDINGS OF FACT.

I. The First Presbyterian Church, of Danville, Ky., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church property described in the petition and used and occupied the same as a hospital and damaged the same. The reasonable rental value of said use and occupation, together with the damages thereto in excess of ordinary wear and tear, was then and there the sum of six hundred and ten dollars ($610), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not presented earlier.

BY THE COURT.

Filed February 25, 1908.

A true copy.

Test this 26th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 346.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, BRANDENBURG, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF BRANDENBURG, KY., AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13061. Trustees of the Methodist Episcopal Church South, of Brandenburg, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7439, Fifth-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Brandenburg, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Brandenburg, Kentucky, the sum of five hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court March 23, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the Methodist Episcopal Church South, of Brandenburg, Ky., consisting

of a well-constructed brick church building about 60 by 40 feet in size, and occupied the same as quarters for a considerable period; as a result the property was greatly injured by reason of numerous portholes being opened in the brick walls and in other respects; that the reasonable rental value of said church, including the repairs necessary to restore it to the same condition as before such occupation, was the sum of $500, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 19th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by M. L. Blake, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Brandenburg, Ky., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same for military purposes and damaged the same. The reasonable rental value of said property, together with the damages thereto in excess of ordinary wear and tear, was then and there the sum of one hundred and twenty-five dollars ($125), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not earlier presented.

Howry, J., not being present on account of illness, took no part in making up these findings.

By the Court.

Filed February 25, 1908.

A true copy.

Test this 26th day of February, 1908.

[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 347.

TRUSTEES OF METHODIST EPISCOPAL CHURCH, BOONSBORO, MD.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE TRUSTEES OF THE METHODIST EPISCOPAL CHURCH OF BOONSBORO, MD., AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11629. Trustees of the Methodist Episcopal Church of Boonsboro, Md., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for occupation of and damage to a church building by the military forces of the United States during the late civil war. On the 27th day of April, 1904, the United States Senate referred to the court a bill in the following words:

"[S. 867, Fifty-eighth Congress, first session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church of Boonsboro, Maryland.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church of Boonsboro, Maryland, the sum of five hundred dollars, for use of and damage to church building by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 18th day of January, 1908, and filed their petition, in which it is substantially averred:

That during the late civil war, and on or about September 14, 1862, the military forces of the United States under command of General McClellan took possession of the church building of the Methodist Episcopal Church of Boonsboro, Md., and used and occupied the same for hospital purposes for a period of about two months, and

damaged the same. That the reasonable rental value of said building during the period it was so occupied, including the repairs necessary to restore the building to the condition in which it was at the time the said military forces took possession, was the sum of $500, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 20th day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by P. M. Cox, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

Howry, J., not being present on account of illness, took no part in making up these findings.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church of Boonsboro, Md., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of and used the church building described in the petition for about two months for hospital purposes, and damaged the same. The reasonable rental value for the period aforesaid, together with the damages in excess of ordinary wear and tear, was the sum of one hundred and twenty dollars ($120), no part of which appears to have been paid.

III. The claim herein was presented to the Quartermaster's Department and rejected for want of jurisdiction on July 2, 1888. The claim was thereafter presented to Congress and referred to this court by resolution of the United States Senate, as hereinbefore stated in the statement of the case.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 348.

TRUSTEES OF CEDAR GROVE CHURCH, OF CULPEPER COUNTY, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF CEDAR GROVE CHURCH, OF CULPEPER COUNTY, VA., AGAINST THE UNITED STATES.

FEBRUARY 28, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12989. Trustees of Cedar Grove Church, of Culpeper County, Va., v. The United States.]

STATEMENT OF CASE.

This is a claim for a church building taken and used by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 6894, Fifty-ninth Congress, second session.]

"A BILL for the relief of the trustees of Cedar Grove Church, of Culpeper County, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of Cedar Grove Church, of Culpeper County, Virginia, the sum of one thousand dollars, for use and destruction of their church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 31st day of May, 1907, and filed their petition, in which it is substantially averred:

That during the winter of 1863 and 1864 the military forces of the United States, under command of Gen. George G. Meade, took possession of the church building of the Cedar Grove Church, of Culpeper County, Va., and removed the said building,

appropriating the material to the use of the Army in building winter quarters; that said building at the time of its removal as aforesaid was reasonably worth the sum of $1,000, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 17th day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

Howry, J., not being present on account of sickness, took no part in making up these findings.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and arguments of counsel on each side, makes the following

FINDINGS OF FACT.

I. The Cedar Grove Church, of Culpeper County, Va., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and tore down the same and used the material therein contained in the construction of winter quarters for the troops. The reasonable value of said building at said time and place was the sum of three hundred and ninety dollars ($390), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not presented earlier.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 26th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 352.

LEROY P. WALKER.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF LEROY P. WALKER, SOLE HEIR AT LAW OF ELIZA D. WALKER AND L. P. WALKER, HER HUSBAND, AGAINST THE UNITED STATES.

MARCH 2, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12628. Leroy P. Walker, sole heir at law of Eliza D. Walker and L. P. Walker, her husband, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for the proceeds of cotton sold by order of the military agents of the United States during the civil war and prior to the captured and abandoned property act, said proceeds being turned over to the Government. On the 28th of June, 1906, the United States Senate referred to this court a bill in the following words:

" [S. 5807, Fifty-ninth Congress, first session.]

"A BILL For the relief of Leroy P. Walker, sole heir at law of Eliza D. Walker and L. P. Walker, her husband.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Leroy P. Walker, the sole heir at law of Eliza D. Walker and L. P. Walker, her husband, of Madison County, Alabama, the sum of five thousand and ninety-three dollars and the value of the sum of six thousand one hundred and thirteen dollars and fifty cents in southern-bank currency, which sums were the proceeds arising from the sale by an order of General O. M. Mitchell, in the year eighteen hundred and sixty-one, of certain cotton belonging to the said Eliza D. Walker and L. P. Walker, her husband, and turned over to the United States quartermaster of the Third Division, United States Army."

The claimant appeared in this court July 9, 1906, and filed his petition, in which it is substantially averred—

That the claimant is the sole legal representative and heir at law of Eliza D. Walker and Leroy Pope Walker, her husband, both of Madison County, Ala., as both the said Eliza D. and Leroy Pope Walker died intestate since the civil war, leaving no other heir than their one child, the claimant.

That the aforesaid Eliza D. Walker owned a plantation in Madison County, Ala., as her separate estate, whereon certain cotton was grown and stored; that the said cotton was ordered to be sold by the United States, by Gen. O. M. Mitchell, who occupied that section of the country, and the proceeds were by him directed to be held in charge by his quartermaster, Capt. J. J. Slocum, U. S. Army; that in accordance with these orders the sum of $11,205.95—$5,093.20 of which was in gold and the balance in southern-bank currency, at that time at par value with gold—was paid over to the United States quartermaster and receipted for by him and turned in to the United States Government.

That Leroy P. Walker, the father of claimant, was granted a special pardon by President Andrew Johnson on September 28, 1865, and Eliza D. Walker, the mother of claimant, took the oath of allegiance to the United States, as prescribed by the proclamation of the President of May 29, 1865.

That neither Leroy P. Walker nor Eliza D. Walker, the mother and father of claimant, both late of Madison County, Ala., nor the claimant himself have ever received any sum in settlement of this claim, wherefore claimant claims to be justly entitled from the United States to the sum of $11,205.95.

The case was submitted on loyalty and merits without argument on February 17, 1908.

Messrs. Herbert & Micou submitted evidence and briefs for claimant, and the Assistant Attorney-General, by W. W. Scott, esq., his assistant, submitted brief in behalf of the United States.

The court, upon the evidence and after considering the briefs of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant's decedents, Leroy Pope Walker and Eliza D. Walker, were not loyal to the Government of the United States throughout the late civil war.

II. During the late civil war the military forces of the United States under the command of Gen. O. M. Mitchell, then operating in Madison County, Ala., seized on the plantation of Leroy Pope Walker or his wife, Eliza D. Walker, in said county, about 160 bales of cotton as the property of said Leroy Pope Walker, then serving as an officer in the Confederate States army, and said cotton was sold by order of said Gen. O. M. Mitchell and the proceeds, amounting to eleven thousand two hundred and six dollars and fifty cents ($11,206.50), in gold and currency, as follows: Gold, $4,751; United States currency, $342; southern currency, $6,113.50, were credited to the United States by Capt. C. K. Smith, assistant quartermaster, in his account current for October, 1863.

III. The foregoing claim was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore set forth in the statement of this case, and no reason is given why the bar of any statute of limitations should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

Howry, J., not being present on account of illness, took no part in making up these findings.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 27th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 353.

PHELPS COUNTY, MO.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE COUNTY OF PHELPS, STATE OF MISSOURI, AGAINST THE UNITED STATES.

MARCH 2, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13162. County of Phelps, State of Missouri, v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

["S. 8597, Fifty-ninth Congress, second session.]

"A BILL For the relief of the county of Phelps, State of Missouri.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the county court of the county of Phelps, State of Missouri, at Rolla, Missouri, the sum of three thousand dollars, in full compensation for the occupation, use, and incidental injury to the court-house of said county by United States military forces during the civil war."

The county court of said county appeared in this court March 25, 1907, and filed its petition, in which it is substantially averred:

That, during the late civil war, the military authorities of the United States took possession of the property of said county, consisting of the county court-house at Rolla, Mo., a newly finished, large, well-constructed brick building with stone trimmings, having two stories, with six rooms on first floor and courtroom and three other rooms on second floor, and occupied the same from the spring of 1862 until

1865, part of the time as quarters for troops and part of the time as a hospital, and at times as a guardhouse; that a ditch 15 feet deep was dug about the building, and the property otherwise greatly injured as a result of said occupation; that the reasonable rental value of said property during such occupation, including the repairs necessary to restore said property to the same condition as before such occupation, was the sum of $3,000, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 18th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, on the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. During the late civil war the military forces of the United States, by proper authority, for the use of the Army, took possession of the court-house building described in the petition and used the same for hospital and other purposes at various times and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was then and there the sum of eight hundred and ninety dollars ($890), no part of which appears to have been paid.

II. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the same was not earlier prosecuted.

NOTE.—Howry, J., not being present on account of illness, took no part in making up these findings.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 27th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 354.

CHRISTIAN CHURCH NEAR OLD AUSTIN, LONOKE COUNTY, ARK.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE CHRISTIAN CHURCH NEAR OLD AUSTIN, LONOKE COUNTY, ARK., AGAINST THE UNITED STATES.

MARCH 2, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13119. The Christian Church, near old Austin, Lonoke County, Ark., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation and destruction of property by the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"A BILL For the relief of the Christian Church, near old Austin, Lonoke County, Arkansas.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Christian Church near old Austin, Lonoke County, Arkansas, the sum of one thousand dollars, in full compensation for the occupation, use, and incidental destruction of the property of said church by United States military forces during the civil war."

The trustees of this church appeared in this court March 25, 1907, and filed their petition, in which it is substantially averred:

That during the civil war the military authorities of the United States took possession of the property of the Christian Church near old Austin, Lonoke County, Ark., consisting of a well-constructed frame church building about 70 by 40 feet in size, and completely tore down the same, and took the materials therefrom to old

Austin, where they were used to construct quarters for the troops; that the value of said building when so torn down for military uses was $1,000, for which no payment has been made; that a bill for payment of this claim was introduced in Congress several years ago, but no payment ever made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government.

The case was brought to a hearing on loyalty and merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none having been adduced by the defendants, and after considering the briefs and argument of counsel on each side, makes the following

FINDINGS OF FACT.

I. The Christian Church near Old Austin, Lonoke County, Ark., as an organization was loyal to the Government of the United States throughout the civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition, tore down the same, and used the materials therein contained in the construction of quarters for troops. The reasonable value of said property so destroyed was at the said time and place the sum of five hundred and fifty dollars ($550), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not presented earlier.

Howry, J., not being present on account of illness, took no part in the making up of these findings.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 27th day of February, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 355.

TRUSTEES OF CUMBERLAND PRESBYTERIAN CHURCH, LARKINSVILLE, ALA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF CUMBERLAND PRESBYTERIAN CHURCH, OF LARKINSVILLE, ALA., AGAINST THE UNITED STATES.

MARCH 2, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 29, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11040. Trustees of Cumberland Presbyterian Church, of Larkinsville, Alabama, *v.* The United States.]

STATEMENT OF CASE.

On March 3, 1903, Senate bill No. 2525, Fifty-seventh Congress, was referred to this court by resolution of the United States Senate for findings of fact under the terms of the act approved March 3, 1887. Said bill reads as follows:

"A BILL For the relief of the Cumberland Presbyterian Church, of Larkinsville, Alabama.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to the Cumberland Presbyterian Church, of Larkinsville, Alabama, the sum of one thousand two hundred dollars, for the use, occupation of, and damage to said church building by the Federal forces during the late war of the rebellion."

The case was brought to a hearing upon loyalty and merits on the 6th day of January, 1908.

Moyers & Consaul appeared for claimant, and the Attorney-General, by John Q. Thompson, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimants in their petition make the following allegations:

That they are citizens of the United States, residing in Jackson County, Ala.; that they are trustees of the Cumberland Presbyterian Church, of Larkinsville, Ala.

That during the winter of 1863 and 1864 the United States military forces, by proper authority, took possession of, used, and occupied the house of worship belonging to said church, and thereafter tore the same down and appropriated the materials to their use; that said building was worth at the time of taking the sum of $1,200.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Cumberland Presbyterian Church, of Larkinsville, Ala., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church property described in the petition and used and occupied the same as a stable, and later tore down the building and used the material therein contained in the erection of quarters for troops. The reasonable value of the building at the time of its destruction, together with the rent during the period of occupancy, was then and there the sum of five hundred and twenty-five dollars ($525), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as aforesaid, and no reason is given why the bar of any statute of limitation should be removed, or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed January 13, 1908.

A true copy.

Test this 28th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 356.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, UNISON, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF UNISON, VA., AGAINST THE UNITED STATES.

MARCH 2, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 27, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12984. Trustees of the Methodist Episcopal Church South, of Unison, Va., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation, alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 6889. Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Unison, Va.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Unison, Virginia, the sum of eight hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court April 30, 1907, and filed their petition, in which it is substantially averred that:

During the late civil war the military forces of the United States took possession of the property of the Methodist Episcopal Church South, of Unison, Va., consisting of a well constructed brick church building, and occupied the same as a hospital after

a fight near by, some thirty or more wounded soldiers being placed in the church, and amputations and other operations were performed there; that the property was so injured as to require new floor, new seats, repainting, and general repairs; that the reasonable rental value of said property during such occupation, including the repairs necessary to restore it to the same condition as before such occupation, was the sum of $800, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 17th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimants, none being adduced by the defendants, and after considering the briefs and argument of counsel on each side, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Unison, Va., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States by proper authority took possession of the church building described in the petition and used and occupied the same as a hospital and damaged the same. The reasonable rental value of said property, together with the damages thereto in excess of ordinary wear and tear, was then and there the sum of one hundred and fifty dollars ($150), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not presented earlier.

Howry, J., not being present on account of illness, took no part in making up these findings.

By the Court.

Filed February 25, 1908.
A true copy.
Test this 27th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 357.

TRUSTEES OF McDANIEL'S CHAPEL, METHODIST EPISCOPAL CHURCH SOUTH, SHELLMOUND, TENN,

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF McDANIEL'S CHAPEL, METHODIST EPISCOPAL CHURCH SOUTH, SHELLMOUND, TENN., AGAINST THE UNITED STATES.

MARCH 2, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, February 29, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the finding of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11007. Trustees of McDaniel's Chapel, Methodist Episcopal Church South, Shellmound, Tenn., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use, occupation, damage, and destruction to a church building by the military forces of the United States during the late civil war.

On the 3d day of March, 1903, the United States Senate referred to the court a bill in the following words:

"[S. 101. Fifty-seventh Congress, first session.]

"A BILL For the relief of the trustees of McDaniel's Chapel, Methodist Episcopal Church South, at Shellmound, Marion County, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to the trustees of McDaniel's Chapel, Methodist Episcopal Church South, at Shellmound, Marion County, Tennessee, out of any money in the Treasury not otherwise appropriated, the sum of seven hundred dollars in full of all claims of said church for the use, occupation, consumption, damage, and destruction of its property during the late war of the rebellion by the military forces

of the United States; and the acceptance of said sum shall be a complete and absolute bar to any and all claims of said church for damages against the United States."

The claimants appeared in this court on the 26th day of September, 1906, and filed their petition, in which it is substantially averred:

That G. W. Moore, L. B. Barnett, W. B. McDaniel, and W. C. Clouse are trustees of McDaniel's Chapel, Methodist Episcopal Church South, of Shellmound, Marion County, Tenn.; said church was loyal to the Government of the United States from the commencement of said war until its close; said church building was in good condition and repair and was used as a regular place of worship; on September 1, 1863, part of the Ninth Ohio Regiment, belonging to Gen. J. M. Brannon's Division of General Rosecrans's army, took possession of said church building, tore down, demolished, and made use of parts thereof for camp and tent equipage, fuel, etc.; said church building was a frame structure 30 by 45 feet, painted, furnished with proper pulpit furniture, seats, and accommodation. The church cost the sum of $800 to build.

The case was brought to a hearing on loyalty and merits on the 3d day of February, 1908.

R. W. Haynes appeared for the claimants, and the Attorney-General, by George E. Boren, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. McDaniel's Chapel, Methodist Episcopal Church South, of Shellmound, Tenn., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and tore down the same and used the materials thereof in the construction of bunks for the troops and sheds for horses. The reasonable value of the building at the time and place of destruction was the sum of five hundred and twenty dollars ($520), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress, and reference to this court by resolution of the United States Senate as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not earlier presented.

BY THE COURT.

Filed February 17, 1908.
A true copy.
Test this 28th day of February, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 358.

JOHN CROSBY BROWN, EXECUTOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF JOHN CROSBY BROWN, EXECUTOR OF JAMES BROWN, DECEASED, AGAINST THE UNITED STATES.

MARCH 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 2, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 10869. John Crosby Brown, executor of the will of James Brown, deceased, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for work done and materials furnished in the construction of the machinery and boilers for the U. S. monitor *Miantonomoh*.

On June 17, 1902, the United States Senate by resolution referred to the court, under the provisions of the act of March 3, 1887, known as the Tucker Act, a bill reading as follows:

"[S. 1181, Fifty-seventh Congress, first session.]

"A BILL For the relief of the estate of James Brown, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be paid to the personal representatives of James Brown, deceased, of the Novelty Iron Works, out of any money in the Treasury not otherwise appropriated, the sum of thirty-five thousand eight hundred and thirty-two dollars and four cents, in full payment and discharge of the claim of said personal representatives of James Brown, deceased, of the Novelty Iron Works, for work done and material furnished in the construction of the machinery of the ironclad *Miantonomoh*, as per report of Thomas O. Selfridge, commodore and president of board (Senate Executive Document Numbered Eighteen, first session of the Thirty-ninth Congress)."

The claimant appeared and filed his petition in this court on the 10th day of October, 1906, in which he avers as follows:

That he is a citizen of the United States, residing in the city of New York, in the State of New York, and is the surviving acting executor of the will of the late James

Brown, who was a citizen of the United States, and a resident of the city of New York, in the State of New York, and that he departed this life on the 1st day of November, 1877; that both the claimant and his testator resided at New York City throughout the years 1861 to 1865 and gave no aid or comfort to the rebellion, and were at all times loyal to the Government of the United States.

That the Novelty Iron Works, of which James Brown was the sole owner and sole creditor, and which company has long since ceased to exist, entered into a contract with the United States on the 15th day of September, 1862, for the building and construction of the engines and machinery for the U. S. monitor *Miantonomoh*, the same to be constructed within seven months from the date of the contract, the United States to deliver the vessel to the contractor within five months from date of contract; that the design of the *Miantonomoh* was new and experimental as respected its turrets, and the contractor was delayed in his work by the United States to enable them to work out the new and difficult problems arising from the novelty of the vessel, and the contractor was further delayed by changes made by the United States in the plans, size, and construction of the machinery and engines to adapt them to this new construction, so that by these changes and delays, all occasioned by the action of the United States, the work under the contract was not completed and accepted by the United States until August 11, 1865.

That these experiments, delays, and changes postponed the work done by the contractor until prices for labor and material had very greatly advanced beyond those prevailing during the contract term, so that the actual cost to the contractors of the machinery and engines as finally completed amounted to the sum of $202,845.84.

That the contractor received from the United States for and on account of all said work the sum of $167,000 only, being $35,832.04 less than its actual cost. The only ascertainment of how much the engines and machinery of the *Miantonomoh* cost the contractors over and above the allowance for extra work and the contract price was by a board of naval officers thereunto authorized by the Secretary of the Navy on the 25th day of May, 1865. The loss to the contractors by reason of the delays and changes ordered by the United States was $35,832.04 over and above all sums heretofore received from the United States.

The contractors were not guilty of laches, inasmuch as they presented their claim to said board on the 10th day of October, 1865, and the same has been pending either before the Navy Department or Congress until its reference under the foregoing resolution.

The case was brought to a hearing on loyalty and merits on the 5th day of May, 1907.

John C. Fay, esq., appeared for the claimant, and the Attorney-General, by Charles F. Kincheloe, his assistant and under his direction, appeared for the defense and interests of the United States.

The court, upon the evidence and after considering the proofs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. John Crosby Brown is the duly appointed surviving executor of the will of James Brown, deceased, who was loyal to the Government of the United States throughout the late civil war.

II. The Novelty Iron Works, of New York City, was an incorporated company duly organized and incorporated under the laws of the State of New York, having a president and board of directors. The president of the company in 1862 was Horatio Allen, of New York City, and the business of the company was the manufacturing of marine and other engines. It does not appear when said company was incorporated, nor does the date and manner of its dissolution appear. The claimant's decedent, James Brown, appears to have owned practically all of the stock and assets of the company at the time of its dissolution, except a small number of shares of stock which were held by five individuals, relatives, and others in the employ of said company, for the purpose of enabling them to act as members of the board of directors of said company. What number of shares were so held and who is the owner or owners thereof at the present time does not appear.

III. On or about September 15, 1862, the Novelty Iron Works entered into a contract with the United States, through its Chief of the Bureau of Steam Engineering, for the building and construction of the engines and machinery for a United States monitor, afterwards called the *Miantonomoh*, then being or about to be constructed for the United States.

IV. The work was to be done within seven months after the date of the contract, under onerous penalties, for the sum of $158,500, to be completed within the seven months, provided the vessel was delivered to the contractors within five months from the date of the contract.

V. During the construction of the vessel there were alterations aggregating $8,500 and additions aggregating $64,869.08 ordered and paid for by the Navy Department in addition to the full contract price, making a total payment to the contractors, less trial expenses, of $231,869.06.

VI. By reason of these delays, over which the contractors had no control, and the necessary changes in the engines and machinery to adapt them to the new work, the work under the contract was not completed and accepted by the United States until August 11, 1865. In consequence of numerous contractors and builders of Government vessels during the war having asked additional compensation for the construction of said vessels on the ground that they had cost the contractors more than they had received for them the Senate of the United States on March 9, 1865, passed the following resolution:

"*Resolved*, That the Secretary of the Navy be requested to organize a board of not less than three competent persons, whose duty it shall be to inquire into and determine how much the vessels of war and steam machinery contracted for by the Department in the years 1862 and 1863 cost the contractors over and above the contract price and allowance for extra work, and report the same to the Senate at its next session, none but those that have given satisfaction to the Department to be considered."

The Navy Department thereupon appointed a board consisting of Commodore Thomas O. Selfridge, Chief Engineer Henderson, and Paymaster Eldridge, commonly known as the Selfridge board; and the contractors in this case presented to said board a sworn statement of claim alleging the entire cost to them of the said vessel *Miantonomoh* to have been $202,832.04, thus claiming the entire cost to them over and above the $167,000 theretofore paid them to have been $35,832.04.

Upon consideration said board decided that the vessel had cost the contractors this amount of thirty-five thousand eight hundred and thirty-two dollars and four cents ($35,832.04) over what they had received for it, and the board so reported to the Secretary of the Navy, by whom said report was transmitted to the Senate on January 30, 1866.

VII. No evidence has been adduced to impeach or confirm the report or conclusion of the Selfridge board by either party.

VIII. The contractors presented this claim to said Selfridge board on June 29, 1865, since which time no action appears from the record to have been taken in the prosecution of the claim until its presentation to the Fifty-seventh Congress by Senate bill No. 1181, as hereinbefore set forth.

BY THE COURT.

Filed May 13, 1907.
A true copy.
Test this 2d day of March, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 359.

VELMA C. WILLIAMS, ADMINISTRATRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF VELMA C. WILLIAMS, ADMINISTRATRIX OF PAUL CURTIS, DECEASED, AGAINST THE UNITED STATES.

MARCH 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 3, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 10872. Nelson Curtis, executor of the estate of Paul Curtis, deceased, *v.* The United States.]

ORDER.

It appearing that since the filing of the findings in the above-entitled cause on May 15, 1907, the executor, Nelson Curtis, has died, it is ordered that the claimant's motion filed March 3, 1908, to substitute Velma C. Williams as administratrix be allowed, and that said Velma C. Williams be substituted as administratrix in the place of said Nelson Curtis, deceased.

BY THE COURT.

Filed March 3, 1908.
A true copy.
Test this 3d day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[Court of Claims of the United States. Congressional, No. 10872. Velma C. Williams, administratrix, of Paul Curtis, deceased, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for work done and material alleged to have been furnished in the construction of the hull of the United States double-ender *Chicopee*.

On June 17, 1902, the United States Senate, by resolution, referred to the court under the provisions of the act of March 3, 1887, known as the Tucker Act, a bill reading as follows:

"S. 5, Fifty-seventh Congress, first session.

"A BILL For the relief of the legal representatives of Paul Curtis, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be paid to the legal representatives of Paul Curtis, deceased, of Massachusetts, out of any money in the Treasury not otherwise appropriated, the sum of four thousand one hundred and twenty-eight dollars and thirty-nine cents, in full payment and discharge of the claim of said Paul Curtis for work done and material furnished in the construction of the hull of the United States double-ender gunboat *Chickopee*, as per report of Thomas O. Selfridge, commodore and president of board, Senate Executive Document Numbered Eighteen, first session of the Thirty-ninth Congress."

The claimant appeared and filed his petition in this court on the 28th day of April, 1905, in which he avers as follows:

That he is a citizen of the United States, residing in the city of Boston, State of Massachusetts. That Paul Curtis, his father, died about the year 1872. That they resided at Boston, Mass., throughout the years 1861 to 1865 and gave no aid and comfort to the rebellion, and were at all times loyal to the Government of the United States.

That the said Paul Curtis, since deceased, entered into a contract with the Navy Department, dated September 9, 1862, to build and equip the hull of a paddle-wheel gunboat, known as a wooden double-ender, subsequently called the *Chicopee*, and that he performed his contract by completing the vessel; and the defendants, by their proper officers, paid to him the contract price, $75,000. By the contract she was to be launched January 13, 1863, but she was not launched until about six weeks later. The agreement allowed fifty days more for completing the vessel, but instead of being completed March 4, 1863, the machinery was not put on board until April 1, 1864.

That at the outset there was delay by the United States in furnishing the drawings, which on their arrival showed changes. Alterations and changes were ordered by the Government and performed by the contractor. These orders for such alterations and changes were made from time to time from the beginning until the end of the work. Many changes were ordered after the vessel had been delivered by the contractor at the premises of the contractor for the machinery, which were more than 200 miles from the shipyard of Paul Curtis, where the hull had been built. These alterations were expensive to the contractor, over and above their direct cost, because they delayed the completion of the work beyond the contract term into a period when prices of labor and material were higher and because of the cost of the insurance, personal attendance, and other running expenses.

That the contractor built this ship as quick as he could and as economically as possible. By reason of the changes and delays of the Government the cost to the contractor was increased $19,685.46, exclusive of loss of $612.50 by reason of delay in payments. Paul Curtis received $500 because of the nondelivery at the Boston Harbor and $3,304.20 for extras.

That the only ascertainment of how much the hull of the *Chicopee* cost the contractor over and above the allowance for extra work and the contract price was by a board of naval officers thereunto authorized by the Secretary of the Navy on the 25th of May, 1865. The loss to the contractor by reason of the delays and changes ordered by the United States was fifteen thousand eight hundred and eighty-one dollars and twenty-six cents ($15,881.26), over and above all sums heretofore received from the United States and exclusive of the loss of $612.50 by reason of delay in payments.

That the contractor was not guilty of laches inasmuch as he presented his claim to said board on the 3d of August, 1865; he also presented his memorial to Congress March 16, 1864, and has been diligent ever since in asking relief from Congress. No assignment of this claim has ever been made.

The case was brought to a hearing on loyalty and merits on the 13th day of May, 1907.

John S. Blair, esq., appeared for the claimant, and the Attorney-General, by Charles F. Kincheloe, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT

I. The claimant, Nelson Curtis, is the executor of the estate of Paul Curtis, who died about the year 1872. Edwin Wright who was the coexecutor under the will died in the year 1899. Paul Curtis, deceased, was loyal to the Government of the United States throughout the war for the suppression of the rebellion.

II. Said Paul Curtis entered into a contract with the Navy Department September 9, 1862, to build and equip the hull of a paddle-wheel gunboat, known as a wooden double-ender and subsequently called the *Chicopee*, for $75,500. He completed the vessel, and the defendants by their proper officers paid him the contract price of $75,500, together with $3,304.20 for extra work resulting from changes and alterations during the process of the work, making a total payment to him of $78,804.20. By the contract the vessel was to be launched January 13, 1863, one hundred and twenty-six days from the date of the contract, but was not launched until March 4, 1863. The contract allowed fifty days more for completing the vessel, but instead of being completed March 4, 1863, she was not finished until April 1, 1864, the principal cause of this delay being the delay of the machinery contractor in completing and installing the machinery of the vessel.

III. Changes in the plans and specifications and alterations of work were ordered by the Government and performed by the contractor throughout the progress of the work, many changes being made after the delivery of the vessel in New York City, some 200 miles distant from the contractor's place of business, which made such work more expensive to the contractor than it would otherwise have been. The vessel remained in New York over a year awaiting completion and installation of the steam machinery before the contractor could finally complete the work on the hull, during which time the prices of labor and materials very greatly increased, thus adding to the cost of the work performed during the period of delay.

IV. In consequence of the presentation of claims by a number of contractors for additional compensation for the construction of war vessels for the Government during the war the United States Senate on March 9, 1865, passed the following resolution:

"*Resolved*, That the Secretary of the Navy be requested to organize a board, of not less than three competent persons, whose duty it shall be to inquire into and determine how much the vessels of war and steam machinery contracted for by the Department in the years 1862 and 1863 cost the contractors over and above the contract price and allowance for extra work, and report the same to the Senate at its next session. None but those that have given satisfaction to the Department to be considered."

The Navy Department thereupon appointed a board consisting of Commodore Selfridge, Chief Engineer Henderson, and Paymaster Eldridge, commonly known as the Selfridge Board; and the contractor in this case presented to said board a claim for $18,870.41, alleging this to have been the amount of the extra cost of said vessel to him over and above the amount received therefor.

Upon consideration said board decided that the vessel had cost the contractor over and above the amount he had received for it the sum of four thousand one hundred and twenty-eight dollars and thirty-nine cents ($4,128.39), and the board so reported to the Secretary of the Navy, by whom said report was transmitted to the Senate on January 30, 1866.

V. No evidence has been adduced to either impeach or confirm the allowance made by the Selfridge Board as aforesaid.

VI. The facts bearing upon the question whether there has been delay or laches in the presentation and prosecution of this claim appear to be that the contractor presented his claim to Congress March 16, 1864; to the Selfridge Board August 3, 1865, and to the Marchand Board in 1867. The claim was also presented to Congress in January, 1901, and later referred to the court by the United States Senate June 17, 1902, as hereinbefore mentioned.

BY THE COURT.

Filed May 15, 1907.
A true copy.
Test this 3d day of March, A. D. 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 360.

LOUIS A. CORNTHWAITE.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF LOUIS A. CORNTHWAITE AGAINST THE UNITED STATES.

MARCH 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 2, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims of the United States. Congressional, No. 13093-6. Louis A. Cornthwaite *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant was serving as an officer in the Navy of the United States upon receiving and other ships belonging to the Navy was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7801, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 22d day of April, 1907.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by J. A. Van Orsdel, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes substantially the following allegations:

That he served as acting ensign in the United States Navy on the receiving ship *Allegheny*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances, to which he is entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay, amounting to $861.39, is due to claimant, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and a resident of Baltimore, Md., and is the identical person who served as acting ensign on the receiving ship *Alleghany* from July 3, 1865, to March 18, 1868.

For said service claimant has been paid the shore pay and allowances of an ensign, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he has received, and sea pay and allowances which he claims to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

II. It does not appear that during the time claimant was attached to said receiving ship as aforesaid he had or was required to have his quarters and to mess on board said vessel, or that he was required to wear his uniform and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of an ensign from July 3, 1865 to March 18, 1868, and the amount which claimant has received for his service during that period, is eight hundred and sixty-one dollars and thirty-nine cents ($861.39), no part of which has been paid.

BY THE COURT.

Filed April 22, 1907.
A true copy.
Test the 2d day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 361.

LILA J. BALDWIN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF LILA J. BALDWIN, WIDOW OF WILLIAM S. BALDWIN, DECEASED, AGAINST THE UNITED STATES.

MARCH 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 2, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims of the United States. Congressional, No. 13093-2. Lila J. Baldwin, widow of William S. Baldwin, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's decedent was serving as an officer in the United States Navy upon receiving ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7811 for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 22d day of April, 1907.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by J. A. Van Orsdel, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in her petition makes substantially the following allegations:

That she is the widow of William S. Baldwin, deceased, who served in his lifetime as mate, United States Navy, on the receiving ship *New Hampshire*, and that during the period of such service he received shore-duty pay and allowances instead of sea pay and allowances to which he was entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656).

That the difference between sea pay and shore pay for decedent's service on receiving ship aforesaid is $212 and that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States and a resident of Norwich, Conn., and is the widow of William S. Baldwin, deceased, who served as mate on the receiving ship *New Hampshire* from December 15, 1870, to August 21, 1871.

II. For said service he has been paid the shore pay and allowances of his grade, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he has received, and sea pay and allowances, which claimant alleges he would have been entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of same.

III. It does not appear that during the time claimant's decedent was attached to said receiving ship as aforesaid he had or was required to have his quarters and to mess on board said vessel, or that he was required to wear his uniform and was not permitted by the rules of the service to live with his family.

IV. The difference between the sea pay and allowances of a mate in the United States Navy from December 15, 1870, to August 21, 1871, and the amount which said decedent received for his service during that period is two hundred and twelve dollars ($212), no part of which has been paid.

BY THE COURT.

Filed April 22, 1907.
A true copy.
Test this 2d day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 362.

J. B. HUBBARD, ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF J. B. HUBBARD, ADMINISTRATOR OF DAVID R. HUBBARD, DECEASED, AGAINST THE UNITED STATES.

MARCH 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 2, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12609. J. B. Hubbard, administrator estate of David R. Hubbard, deceased, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for quartermaster and commissary supplies furnished to the military forces of the United States during the war for the suppression of the rebellion. On the 27th day of June, 1906, the United States Senate referred to the court a bill in the following words:

["S. 4639, Fifty-ninth Congress, first session.]

"A BILL For the relief of the estate of David R. Hubbard, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the administrator of the estate of David R. Hubbard, deceased, of Tishomingo County, Mississippi, the sum of five thousand dollars, for stores and supplies taken for the use of and used by the United States forces during the late war, or so much thereof as may be found to be due by the Court of Claims."

The said administrator of the estate of the said David R. Hubbard, deceased, appeared in this court October 3, 1906, by his attorney, John S. Duffie, and filed his petition, in which it is substantially averred:

That during the entire war for the suppression of the rebellion David R. Hubbard and his wife, Clarinda I. Hubbard, were citizens of the State of Mississippi and of the United States, and residents of Tishomingo County, and lived near Iuka, in said county.

That said Hubbard and wife were engaged in farming in said county, both were loyal to the United States during the entire period of said war, and neither of them voluntarily rendered aid or comfort to the enemy.

That during the year 1862 soldiers under the command of Brig. Gen. D. S. Hanley, a Federal officer, took from the said David R. Hubbard 10 acres of growing corn, of the value of $50 per acre, $500; 191½ cords of wood, at $5 per cord, $957.50; 500 old rails used for fuel by the Federal troops, $2 per hundred, $10, for which a voucher was, on the 25th day of August, 1862, given by Edward Gray, which voucher is hereto attached, marked "Exhibit A."

That during the year 1863 there was taken by Federal forces from said Hubbard, in said county and State, for the use of the Federal Army, 2 mules, value of $225, for which a voucher was given by George H. Harrison, regimental quartermaster, Seventh U. S. Mounted Infantry, which voucher is hereto attached, marked "Exhibit B."

That on or about the 15th of October, 1863, there was taken from said Hubbard, in said county, by the division of the Army of Tennessee commanded by General Osterhaus, at Iuka, Tishomingo County, Miss., 520 bushels of corn in the field, $520; 19 hogs, average weight 100 pounds, 1,900 pounds, at 8 cents, $152; 3 small beeves, 600 pounds, at 8 cents, $48; 1,600 bundles of fodder, 3,200 pounds, at 2 cents, $64; 5 loads of hay, 2,500 pounds, at 2 cents, $50, as shown by a statement that was made by said David R. Hubbard about the time the property was taken, marked "Exhibit C." Accompanying this statement is a letter to the regimental quartermaster, Seventh Illinois Infantry, dated at Iuka, Miss., October 30, 1863, asking him to give vouchers for the property, and vouching for the loyalty of said Hubbard. This letter was signed by A. B. Stuart, surgeon, First Alabama Cavalry, U. S. Volunteers.

There was also taken by the Federal Army, for the use of the Federal troops, in the year 1863, 1 storehouse, worth $800; 1 dwelling house, $500; 1 dwelling house, $400; 1 buggy house, $400; 26,000 feet of lumber, $39; 1 wagon, $80.

Also in 1865, there was taken by General Coynine, for the use of the Federal Army, 1 mule, value $125. The houses and lumber were used for building and flooring the tents (see "Exhibit E"), all of which aggregate the sum of $4,840.50.

The petitioner further states that in 1892 the widow of said Hubbard filed a claim for so much as is covered by said vouchers in the office of the Quartermaster-General, War Department; that said claim was returned to her unpaid, the Quartermaster-General having no jurisdiction of the matter.

The claim was not presented to the Southern Claims Commission, because said Hubbard could find no one willing to present the claim but one J. N. D. Miller, and he wanted to charge one half; said Hubbard refused to give it, and believing that he, said Miller, was the only authorized agent for this community for collecting such claims, the matter was dropped. After said Miller left the community, said Hubbard heard that one W. M. Inge, of Corinth, Miss., was a claim agent, and applied to him; said Inge informed him that the claim was barred.

Afterwards application was made to John S. Duffie & Co., which resulted in the bill above quoted.

The case was brought to a hearing on loyalty and merits on the 6th day of January, 1908.

John S. Duffie appeared for the claimant, and the Attorney-General, by Clark McKercher, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Claimant's decedent, David R. Hubbard, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took from claimant's decedent in Tishomingo County, State

of Mississippi, property of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of fifteen hundred dollars ($1,500), no part of which appears to have been paid.

III. On March 10, 1892, said claim was presented to the Quartermaster-General's Department, but was subsequently disallowed for lack of jurisdiction. Thereafter said claim was referred by resolution of the United States Senate to this court under the provisions of the act of March 3, 1887, commonly known as the Tucker Act.

No other competent evidence is adduced respecting the delay in the presentation of said claim.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 2d March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 363.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, RECTORTOWN, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, RECTORTOWN, VA., AGAINST THE UNITED STATES.

MARCH 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 2, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional No. 13089. Trustees Methodist Episcopal Church South, Rectortown, Virginia, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"S. 7796, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church South, of Rectortown, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to the trustees of the Methodist Episcopal Church South, of Rectortown, Virginia, out of any money in the Treasury not otherwise appropriated, the sum of two thousand dollars, for the use and total destruction of their church property by the Union forces during the war between the States."

The claimants appeared and filed their petition in this court September 3, 1907, in which it is substantially averred:

That during the fall of 1862 the military forces of the United States under command of General McClellan took possession of the church building of the Methodist Episcopal Church South, of Rectortown, Fauquier County, Va., and removed the said building, appropriating the material therein to the use of the Army in building quarters and for other purposes.

That said building was a frame structure filled in with brick, and was about 40 by 50 feet, furnished with pews, pulpit, and the usual church furniture and fixtures, and reasonably worth at the time of its removal the sum of $2,000, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 10th day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by Clark McKercher, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church South, of Rectortown, Va., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and tore down the same and used the material thereof in the construction of quarters for troops. The reasonable value of the building at the time and place of destruction was the sum of one thousand three hundred dollars ($1,300), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case. No satisfactory evidence is adduced showing why the claim was not presented earlier.

BY THE COURT.

Filed February 17, 1908.

A true copy.

Test this 29th day of February, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 364.

TRUSTEES OF NEW HOPE BAPTIST CHURCH, ORANGE COUNTY, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE NEW HOPE BAPTIST CHURCH, OF ORANGE COUNTY, VA., AGAINST THE UNITED STATES.

MARCH 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 2, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11795. Trustees of New Hope Baptist Church, of Orange County, Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 28th day of February, 1905, the United States Senate referred to the court a bill in the following words:

"[S. 6959, Fifty-eighth Congress, third session.

"A BILL For the relief of the trustees of New Hope Baptist Church, of Orange County, Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of New Hope Baptist Church, of Orange County, Virginia, the sum of eight hundred dollars, for use of and damage to their church building by the military forces of the United States during the late war of the rebellion."

The claimants appeared in this court on the 31st day of October, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war, and on or about November 26, 1863, the military forces of the United States, under command of General Meade, took possession of the church building of the New Hope Baptist Church, of Orange County, Va., and used and occupied the same for hospital purposes until November 30; that during said

occupancy the pews, window shutters, and doors of said building were removed and appropriated to the use of the Army; that the cost to restore the building to the condition in which it was at the time the said military forces took possession was the sum of $800, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 10th day of February, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by M. A. Coles, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The New Hope Baptist Church, Orange County, Va., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority took possession of the church building described in the petition and used and occupied the same as a hospital and damaged the same. The reasonable rental value of such use and occupation, together with damages thereto in excess of ordinary wear and tear, was then and there the sum of one hundred and fifty dollars ($150), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned in the statement of the case. No satisfactory evidence is adduced showing why the claim was not presented earlier.

By the Court.

Filed February 17, 1908.

A true copy.

Test this 29th day of February, 1908.

[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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30TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 365.

TRUSTEES OF TRINITY PROTESTANT EPISCOPAL CHURCH MARTINSBURG, W. VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF TRINITY PROTESTANT EPISCOPAL CHURCH OF MARTINSBURG, W. VA., AGAINST THE UNITED STATES.

MARCH 3, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 2, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12899. Trustees of Trinity Protestant Episcopal Church of Martinsburg, W. Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 27th day of April, 1904, the United States Senate referred to the court a bill in the following words:

"[S. 3200, Fifty-eighth Congress, second session.]

"A BILL For the relief of the trustees of Trinity Episcopal Church, of Martinsburg, West Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Trinity Episcopal Church, of Martinsburg, West Virginia, the sum of one thousand four hundred and fifty dollars, in full satisfaction for the use of and occupation of said church for hospital purposes by the Federal troops from December first, eighteen hundred and sixty-two, to May first, eighteen hundred and sixty-five, at the rate of fifty dollars per month."

On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 5180, Fifty-ninth Congress, first session.]

"A BILL For the relief of the trustees of Trinity Protestant Episcopal Church, of Martinsburg, West Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of Trinity Protestant Episcopal Church, of Martinsburg, West Virginia, the sum of one thousand four hundred and ninety-four dollars and fifty-three cents, on account of repairs rendered necessary to their church building by reason of the occupation of the same by the military forces of the United States during the late civil war."

The claimants appeared in this court March 25, 1907, and filed their petition, in which it is substantially averred:

That on or about June, 1861, the military forces of the United States, under command of General Patterson, took possession of the church building of Trinity Protestant Episcopal Church, of Martinsburg, W. Va., and used and occupied the same for hospital purposes; that thereafter different other commands of the United States Army continued to use and occupy the said building until the close of the war; that by reason of such occupancy the building was very much damaged, and the pews, pulpit, furniture, and fixtures were destroyed.

That the reasonable rental value of said building during the period it was so occupied, including the repairs necessary to restore the building and contents to the condition in which they were at the time the said military forces took possession, was the sum of $2,944.53, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 25th day of February, 1908. G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by Malcolm A. Coles, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, except the report of the Treasury Department relative to the presentation of a claim for damages, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Trinity Protestant Episcopa Church, of Martinsburg, W. Va., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same for hospital purposes and barracks for a period of about three years and damaged the same. The reasonable rental value for said period, together with damages in excess of ordinary wear and tear, was then and there the sum of thirteen hundred and forty dollars ($1,340), no part of which appears to have been paid.

III. A claim by the claimant church herein was filed in the Treasury Department for damages, which claim was disallowed January 20, 1880, by the accounting officers because they had no jurisdiction over the same. Thereafter the United States Senate, by resolution, referred to the court April 27, 1904, a claim for rent, and on March 2, 1907, a claim for damages. No satisfactory evidence is adduced showing why the claims were not earlier presented.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 2d day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 367.

AIMS OF MINNESOTA FARMERS' FEDERATION.

Mr. NELSON presented the following

LETTER FROM THE PRESIDENT OF THE MINNESOTA FARMERS' FEDERATION RELATIVE TO THE AIMS OF THAT ORGANIZATION.

MARCH 6, 1908.—Referred to the Committee on Agriculture and Forestry and ordered to be printed.

I am a farmer in Stevens County, Minn. For thirty-seven years I have lived and worked upon my farm. Years ago I learned that cooperation and organization by the farmers would aid him. We have in Minnesota many farmers' cooperative companies or associations, such as cooperative elevator companies, cooperative fire, cyclone, and hail insurance companies, and farmers' cooperative stores and creameries. Within the past two years we have organized what is known as the Minnesota Farmers' Federation, which aims to bring all farmers' organizations together to enable them to take concerted and united action relating to matters of general interest to farmers of Minnesota. I am an officer in a number of these associations and I believe that I can fairly represent the views of Minnesota farmers regarding the proposed Federal inspection of grain. I wish to say at this time that while president of the Farmers' State Alliance in 1890, that the twine plant was put in the Stillwater State prison. This has saved to the farmers of Minnesota more than $2,000,000 and a profit to the State of more than $1,000,000. I make this statement to show what producers can do by cooperation and doing something for self-protection.

A history of the efforts of the Minnesota farmers to secure State inspection of grain would show that it was at the request of the farmers of this State, represented by officers of the Farmers' Alliance, that the grain-inspection laws of 1885 were enacted. These laws as originally enacted did not include local or country supervision. This omission was found to be detrimental to the operation of the terminal inspection laws. It was intended by the inspection law that all country elevators should conform to the grades and dockage thereby established, but it was discovered after the law had been tried for a number of years that the best results could only be obtained by both terminal inspection and through local supervision, which would compel the local or country elevators to conform to the grading and dockage at the terminal markets.

In response to a demand from the farmers of Minnesota, made through the various farmers' organizations, a country-elevator law was

enacted, going into effect in 1893. In 1889, again in response to a demand by the farmers of Minnesota, the so-called board-of-appeals law was enacted, which provided for an independent tribunal appointed by the governor of the State and standing entirely independent of the grain-inspection department itself, and this board of appeals since its creation and at this time has final decision in all disputed cases as to grades or dockage, insuring to the farmers the fullest protection. The men who constitute this board are appointed from all parts of the State, and must be men who in no wise are engaged in the grain trade. They are under heavy bonds for the faithful and impartial performance of their duties. They are in no way connected with the large grain interests, but an impartial board for the purpose of settling disputes.

My knowledge of these matters and the action that I have taken from time to time in securing the original legislation and other legislation of this character was done in my capacity as an officer of the old Farmers' Alliance, and kindred farmers' organizations, such as the State Agricultural Society, which turned down a resolution favoring Federal inspection at its annual meeting of January, this year. In opposing the enactment at this time of a Federal inspection law, I am doing so as an officer of the Minnesota Farmers' Federation. I have reason to believe that the operation of the grain-inspection department in Minnesota as it stands to-day is much more satisfactory to the grain producers than would be a technical Federal inspection department.

The farmers of Minnesota, in their State inspection department, have a protection near at hand. They are in a position in the event of anything being wrong, to go either to the railroad and warehouse commission, to the governor of the State, or to the legislature, as the case may be, to obtain relief or modification of the laws that experience may suggest. They have here their recourse right at home and among people and among officers who thoroughly understand the grain business.

The farmers of Minnesota in view of this would view with disapproval the establishment of a Federal system which would remove the protection which they now have in their railroad and warehouse commission, in their board of appeals, in governor of the State, or in the legislature, to the more remote seat of the General Government at Washington.

There are constantly questions arising that grow out of the operation of these departments requiring immediate investigation and relief, and it would be a tedious and cumbersome undertaking to be obliged to appeal to the Secretary of Agriculture, or perhaps to Congress, for the relief required. For these reasons they oppose Federal inspection. They believe if from time to time anything should be wrong with the State system it can be immediately taken care of.

The farmers of Minnesota also oppose Federal inspection as tending to bring about an undesired centralization of the details of smaller affairs, which by right belong to the State government, into the hands of the General Government. They are loath to be deprived of the privilege of running their own affairs. They believe that they and the men who represent them in the halls of the State legislature and on the warehouse boards and commissions that have charge of the public grain business have a more practical knowledge and representation

than they could possibly obtain under Federal inspection. They are opposed to a technical Federal inspection, which in all probability would lose sight of the practical questions involved in the grading and dockage of grain. They are opposed to turning over to the Federal Government a standard of grades which has been established by virtue of the laws that they (the farmers) are responsible for, and which has given their wheat a world-wide reputation.

In conclusion, I wish to say that in my opinion the trouble with the farmers of North Dakota is not the fact that the Minnesota inspection is not just to them, because in this respect they get exactly the same deal that Minnesota does, but it is apparent to me that their local system of supervision is absolutely at fault. If they applied themselves to the enactment of laws within their own State which would compel their local warehousemen to carefully respect Minnesota grades and dockage and in addition to that pay the proper and correct market value for grain the entire trouble would be regulated.

The people of North Dakota have their remedy right at home. All it is necessary for them to do is to go ahead like the farmers of Minnesota have done and secure the enactment of laws that will properly protect them from local imposition.

If the honorable Senator from North Dakota will join the farmers of Minnesota in an effort to prevent the railroads from collecting rates that will enable them to pay dividends on that continuous and continuing fraud upon the public—to wit, watered stock—they will undertake something worthy of their best efforts, and they will do much to save to Minnesota and posterity the splendid inheritance of liberty obtained after long years of struggle and effort by a liberty-loving people.

R. J. HALL,
President Minnesota Farmers' Federation.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 368.

MEMORIAL OF HENRY W. BLAIR FOR ENROLLMENT OF UNENROLLED DESCENDANTS OF ENROLLED MEMBERS OF CHOCTAW AND CHICKASAW NATIONS.

Mr. TELLER presented the following

MEMORIAL OF THE HON. HENRY W. BLAIR, PRAYING FOR THE ENROLLMENT OF ALL DESCENDANTS OF THE CHOCTAW AND CHICKASAW INDIANS WHO HAVE BEEN BORN OR SHALL BE BORN AFTER THE APPROVED ENROLLMENT UNTIL THE NATIONAL GOVERNMENTS AND TRIBAL EXISTENCE SHALL BE TERMINATED, AND FOR OTHER PURPOSES.

MARCH 6, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the honorable Senate and the House of Representatives:

Your petitioner, Henry W. Blair, in his capacity of a citizen and as attorney for descendants of enrolled members of the Choctaw and Chickasaw nations or Indian tribes who have been born or shall be born subsequent to the enrollment as made and approved on the 4th day of March, 1906, or who may be born hereafter until such national governments and tribal existence shall be terminated, respectfully prays leave to submit this his petition and the accompanying Senate bill, introduced by Senator Gore on the 28th day of February, 1908, providing for the enrollment of such unenrolled descendants and for allotment of lands and distribution of property to them in severalty as lands and other property shall remain undistributed until the community estate of said nations or tribes is exhausted the same as to members already enrolled.

The following is a copy of said bill:

A BILL For the enrollment of unenrolled descendants of enrolled members of the Choctaw and Chickasaw nations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and directed to place upon the final rolls of the Choctaw and Chickasaw nations the names of all descendants of the members of said nations now upon the rolls as approved by the Secretary, which descendants have been or shall be born after the completion of said rolls as heretofore approved, and to allot to such descendants of the remaining lands and to distribute to them of the other property of their respective nations, to each an equal proportion with the other members upon said rolls, the real and personal estate which shall be remaining not already allotted or distributed, as from time to time further allotments or distribution shall be made, until the tribal existence and governments of said nations are terminated.

From some examination of the subject I am of the opinion that the unenrolled descendants of members of these tribes already enrolled are by force of existing laws and treaties entitled to the benefits of the provisions of this bill by rights vested, inalienable, and indestructible by any constitutional or legal action which has hitherto been taken, rights which can be enforced in the courts, and that the Government of the United States will be responsible to all such descendants born before the destruction of the Indian governments and tribal existence for any damage which may result to them from the loss of their equal share of the common estate as it shall exist when they severally come into being.

But the Government has by the enrollment of children under the provisions of the act approved April 26, 1906, indicated its sense of the legality as well as of the justice of the enrollment of descendants born or to be born after the completion of the existing rolls, and the just if not the only practicable provision which can be made for their protection is by definite and seasonable legislation and action of the honorable Secretary.

In this connection I beg leave to submit the following petition prepared by me by request of enrolled members of said tribes, addressed to the honorable Senate and House of Representatives:

To the Honorable Senate and House of Representatives:

The undersigned members of the Choctaw and Chickasaw nations, whose names are borne upon the rolls of said nations as they stand approved by the honorable Secretary of the Interior, respectfully represent that there is now remaining of the lands of said nations about three millions of acres outside of the segregated coal lands not allotted, and the common property of said nations, after full provision by allotment has been made for all those members whose names are now borne upon said rolls.

That said rolls were made up and completed as of the 4th day of March, 1906, the time for their completion having been extended in order to place thereon a large number of new-born children, to wit, about 2,000 in number, with the expectation that the rolls, as they would then stand, would exhaust the lands of said nations suitable for allotment, but such has not proved to be the case.

Since said 4th day of March, 1906, there have been born to members of said nations about 1,500 children, while to exhaust the remainder of said community lands allotments from lands suitable for homestead and agricultural uses can be made to about 6,000 more persons, which number in the present rate of increase, encouraged as it would naturally be by the hope of making suitable provision for those seasonably born (and including the 1,500 already born since March 4, 1906), probably would be added to the families of said nations within the next two years.

We respectfully protest against the sale of these lands and earnestly pray your honorable bodies to enact such legislation as shall secure these unallotted lands to children of our nations, for whose support and education there is the same reason in justice and sound policy to make provision as for children whose names are already upon said rolls, and more than there is to make provision for adults.

It is immeasurably better to allot these lands than to sell them and distribute the money, which in that form is far more likely to disappear rapidly without benefit to us or to our children than if the land itself be allotted to these younger children of almost wholly the same parents whose older brothers and sisters will have both lands and moneys, simply by reason of the arbitrary circumstance that they were born before the 4th day of March, 1906.

We believe that the sentiment of said nations is practically unanimous in favor of the allotment of these remaining lands as we pray that it may be done. We want these lands for our children, and we do not want them sold and distributed in the form of money. We do not object to any taxation of these lands which may be imposed by law upon other lands under like circumstances; but the land itself, which is ours in justice and law, we do earnestly desire for farms and homes.

Furthermore, we do most earnestly pray that your honorable bodies will enact laws by which all our children born on or since said 4th day of March, 1906, and properly identified, prior to any given distribution of moneys or other property, shall receive their equal part with other members of our said nations of the sums then or subsequently distributed to the several members thereof.

It is an unfortunate thing that a part of the same family of children should be provided with a liberal competency, both of land and money, while the remainder, and they the younger, weaker, and more likely to be needy, are to receive nothing from the great common estate which belongs to them quite as much as, or even more in right, than it does to their elders.

Every reason for the enrollment of the new born prior to the 4th day of March, 1906, holds good, and is even stronger for granting our prayer, while there is no reason of which we can conceive why it should be denied, either of public policy or concerning the interests of our nations and of our children, whose future becomes more and more dear to us and a source of still greater anxiety as our former institutions and form of government are passed away.

We therefore petition your honorable bodies to enact a law with substantially the following provisions, to wit:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior is hereby authorized and directed to place upon the final rolls of the Choctaw and Chickasaw nations the names of every living child either of whose parents is a member of one or the other of said nations duly enrolled as such, which child has been born or shall be born on or since the fourth day of March, nineteen hundred and six, and such child shall be entitled to an allotment of land as hitherto made to the members of said nations until the lands of said nations suitable for allotment for homes and agricultural uses and not reserved as coal lands and for other purposes are exhausted; and such children shall be entitled to receive the same amount and share as other persons whose names are borne upon said rolls in any distribution of the money or other property of said nations which may be made after their identification and enrollment."

Signed by the president of the Lucile Convention, held at Lucile, Okla.

DAVE HILL.

This petition is signed, among others, by—
Scott John, president of the Chickasha convention, held at Chickasha, Okla.
Milus Beddingford, president of the Pocassett convention, held at Pocassett, Okla.
Doc. Turnbull, president of the Lindsay convention, held at Lindsay, Okla.
B. Morgan, president of the Womack convention, held at Womack, Okla.
L. A. Campbell, president of the Blanchard convention, held at Blanchard, Okla.
Wood Plato, president of the Naples convention, held at Naples, Okla.
S. Schrock, president of the Tuttle convention, held at Tuttle, Okla.
H. Waldron, president of the Waldron convention, held at Waldron, Okla.
E. B. Bond, president of the Minco convention, held at Minco, Okla.
Wade Plato, president of the Amber convention, held at Amber, Okla.
Dow Fisher, president of the Bradley convention, held at Bradley, Okla.
Dave Hill, president of the Lucile convention, held at Lucile, Okla.

I am informed that the general sentiment of the enrolled members of the Choctaw and Chickasaw nations is in favor of the enrollment of their descendants as herein prayed for.

No objections can be urged on account of delay, difficulty, or expenses of administration, for nothing would be necessary but to produce ordinary proof by certificate of the birth of the living child of the already enrolled member.

No practical question can arise as to grandchildren or remote descendants because the tribal governments and existence will doubtless cease within a brief period, and will certainly end whenever the Government of the United States shall so provide; but until that time the intrinsic rights of the unenrolled descendants are the same as the rights of the enrolled.

Nor is the suggestion that the descendants will inherit from the enrolled an adequate one for two reasons: First, because the enrollment is worth many inheritances, and, second, in too many instances there will be nothing left to inherit, and these children will become paupers, dependent upon the Government or upon the people among whom they live; while, if enrolled, whatever is coming to them will be protected until they are of self-supporting age.

It may be too late for legislative action at this session, but I respectfully submit that the great importance of the interests involved

requires that there be no adverse action taken upon the subject at this time.

Before the next session the desires of the enrolled members of the tribes, as well as of the people generally, can be more fully ascertained, and the legal questions involved can be investigated, so that action can be promptly taken at the next session which will protect these infant children, born and unborn, while not in the least delaying the termination of the Indian governments and the tribal existence.

Respectfully submitted.

HENRY W. BLAIR,

In His Capacity as a Citizen of the United States, and as Attorney for Unenrolled Descendants of Enrolled Members of the Choctaw and Chickasaw Nations.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 371.

HARMON W. HESSEN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF HARMON W. HESSEN AGAINST THE UNITED STATES.

MARCH 9, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 7, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[In the United States Court of Claims. Congressional, No 12562. Harmon W. Hessen *v.* The United States.]

STATEMENT OF CASE.

This is a claim for stores, supplies, and services alleged to have been taken or exacted by or furnished to the military forces of the United States during the war for the suppression of the rebellion, and for the use, occupation, and damage to real estate by said military forces during said war. On the 27th day of June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 2239, Fifty-ninth Congress, first session.]

"A BILL For the relief of Harmon W. Hessen.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Harmon W. Hessen, of Martinsburg, West Virginia, the sum of six thousand dollars, the same being for use and occupation of buildings owned by him as barracks by the military authorities of the United States and for horses, wagons, harnesses, lumber, iron, locks, horseshoeing, blacksmithing, repairing wagons and artillery pieces for the military authorities of the United States from eighteen hundred and sixty-one to eighteen hundred and sixty-five, both inclusive."

The claimant appeared in the court July 11, 1906, and filed his petition, in which it is substantially averred:

That during the war for the suppression of the rebellion he was loyal to the Government of the United States; that while residing in Oakland, Md., real and personal

property owned by him was taken and used or damaged by the United States troops as follows:

One dwelling house in Oakland was occupied by the United States officers and soldiers for the space of one year, during which time the partitions thereof were torn down, lathing and plastering removed, and the house generally damaged by the troops so that it had to be practically rebuilt to make it habitable.

The rental value of which for the said period and the damage to the house amounting to	$400.00
Lumber taken from him by the troops and used for constructing blockhouse, for flooring tents, and building stables, and for fuel	497.50
Iron for blockhouse and other purposes	460.00
2 wagons	300.00
6 horses	1,100.00
6 harnesses	150.00
Putting 100 locks or brakes on new wagons, $10 each	1,000.00
Blacksmithing, horseshoeing, wagon repairing, artillery repairing, including the sharpening of picks and mattocks, the making and furnishing chains and rough locks for teams, all kinds of large chains for hauling logs for the fort and blockhouse, furnishing bolts and large bars, repairing, and fixing wagon wheels and tongues, repairing shovels, furnishing new handles	3,440.00
Making a total of	7,347.50

The case was argued and submitted on loyalty and merits on the 6th day of February, 1908.

Tracy L. Jeffords, esq., appeared for the claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interest of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant herein, Harmon W. Hessen, was loyal to the Government of the United States throughout the late civil war.

II. During said war the military forces of the United States, by proper authority, used and occupied claimant's dwelling house, situate in Allegany County, Md., for a period of one year. During said occupancy by the military forces said building was damaged, the partitions removed, and lathing and plastering torn down. The reasonable value of said use and occupation and the damage to said building was the sum of two hundred dollars ($200), no part of which appears to have been paid.

III. During the late civil war said claimant, by proper authority, performed work and services for the military forces of the United States of the kind and character described in the petition, and during said period there were taken, by proper authority, from claimant's premises in Allegany County, Md., by the military forces of the United States, for the use of the Army, property of the kind and character described in the petition, which said services and property at the time and place of performance and taking were reasonably worth the sum of eighteen hundred and thirty-five dollars ($1,835), no part of which appears to have been paid.

IV. The claim for use, occupation, and damage to the dwelling house was never presented to any Department of the Government prior to its presentation to Congress and reference to this court. Claims for a portion of the services performed and the property taken were presented to the War Department in 1863 and 1879, aggregating $345.86, and were disallowed. In 1865 the whole claim was placed in the hands of an attorney in Washington for collection, by whom no action appears to have been taken before any Department. No further action appears to have been taken by claimant looking to the prosecution of his claim until its reference to this court, as aforesaid, and no reason is given why the bar of any statute of limitation should be removed.

By the Court.

Filed February 25, 1907.
A true copy.
Test this 6th day of February, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 372.

PROCEEDINGS OF CHOCTAW AND CHICKASAW CITIZENSHIP COURT IN CONNECTION WITH COMPENSATION OF ATTORNEYS.

LETTER

FROM

THE ATTORNEY-GENERAL,

TRANSMITTING,

BY ORDER OF THE PRESIDENT AND PURSUANT TO SENATE RESOLUTION OF MARCH 2, 1908, A COPY OF THE PROCEEDINGS OF THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT IN CONNECTION WITH THE ASCERTAINMENT OF THE COMPENSATION OF THE ATTORNEYS FOR THE SAID NATIONS OF INDIANS.

MARCH 10, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., March 9, 1908.

SIR: In accordance with the request contained in the resolution of the Senate adopted March 2, 1908, and transmitted to this Department in the words following:

Resolved (Second), That the Attorney-General be, and he is hereby, directed to transmit to the Senate the evidence taken by the Choctaw-Chickasaw citizen's court in relation to the proper compensation to be allowed the attorneys for the Indians, now on file in the Department of Justice.

and by order of the President, I herewith transmit to the Senate a carbon copy, purporting to contain the proceedings of the Choctaw and Chicasaw citizenship court in connection with the ascertainment of the compensation of the attorneys for the said nations of Indians, which has been on file in this Department and is the only document so on file and included within the terms of the said resolution.

Very respectfully,

CHARLES J. BONAPARTE,
Attorney-General.

The PRESIDENT OF THE SENATE.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT, SITTING AT TISHOMINGO, DECEMBER TERM, 1904.

To the Honorables Spencer B. Adams, chief judge, and Walter L. Weaver and Henry S. Foote, associate judges:

Your petitioners, Mansfield, McMurray & Cornish, respectfuly represent:

That the act of Congress approved March 3, 1903, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," contains a provision as follows:

> That upon the final determination of cases within the jurisdiction of said citizenship court said court may fix reasonable compensation to the attorneys employed by contract dated January seventeenth, nineteen hundred and one, with the Choctaw and Chickasaw nations, and such determination shall be made, irrespective of the rate fixed in said contract between said attorneys and said nations, or either of them, unless the same shall have received the approval of the Secretary of the Interior, and upon the final determination of said cases by said citizenship court, the Treasurer of the United States is hereby directed to pay to said attorneys on the warrant or warrants drawn by the Secretary of the Interior the amount of such compensation out of any funds in the Treasury belonging to said nations.

That they are " * * * the attorneys employed by contracted dated January seventeenth, nineteen hundred and one, with the Choctaw and Chickasaw nations * * * ," and have represented said nations in the trial of all " court claimant " citizenship cases; and that said contract was entered into with the chief executives of the Choctaw and Chickasaw nations under and in pursuance of acts of the general council of the Choctaw Nation and the legislature of the Chickasaw Nation, and a copy of the same is hereto attached, marked " Exhibit A."

That the services so rendered under said contract have been completed, all Choctaw and Chickasaw " court claimant " citizenship cases having been tried before this honorable court and final decrees therein entered; and that such contract has not received the approval of the Secretary of the Interior.

Wherefore, They ask that reasonable compensation be fixed for the services rendered by them under said contract, to the end, that payment therefor may be made as provided in said act.

MANSFIELD, MCMURRAY & CORNISH.

This agreement witnesseth:

First. That the parties in interest to this contract are the Choctaw Nation, by Gilbert W. Dukes, of Talihina, Choctaw Nation, Indian Territory, principal chief thereof; and the Chickasaw Nation, by Douglas H. Johnston, of Emet, Chickasaw Nation, Indian Territory, governor thereof, parties of the first part; and Mansfield, McMurray & Cornish, a firm composed of George A. Mansfield, J. F. McMurray, and Melven Cornish, attorneys at law, residing at South McAlester, Indian Territory, parties of the second part.

Second. That the authority under which this contract is entered into, the scope of such authority, and the reason for exercising the same, will appear from certain acts of the general council of the Choctaw Nation, and the legislature of the Chickasaw Nation, as follows:

[Act of Choctaw council.]

AN ACT To provide for the protection of the Choctaws and Chickasaws from the citizenship claims of those persons known as "court claimants."

Whereas many persons who are not Choctaw or Chickasaw Indians have fraudulently procured judgments of the United States court in Indian Territory, declaring them to be members of said tribes and entitled to allotments of tribal lands and property, and thereby the nations will lose several millions of dollars in lands and tribal property unless immediate and vigorous steps be taken to defeat the claims of said persons, jointly by the Choctaw and Chickasaw nations: Therefore

Be it enacted by the general council of the Choctaw Nation assembled, That the principal chief of the Choctaw Nation is hereby authorized to enter into a contract, jointly with the governor of the Chickasaw Nation, with some suitable person or persons to defeat the claims of said "court claimants" under said alleged judgments: *Provided, however*, That the compensation to be paid under said contract shall be upon the basis of a per centum of the value of the lands and property which said persons would otherwise receive under said alleged judgments, to be fixed in said contract by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, who shall also, for the purpose of ascertaining the amount to be paid under said contract, agree as to the value of the lands and property which each one of said persons would receive: *And provided further*, That such compensation shall be contingent upon the defeat of such persons and the protection of the tribes therefrom; and this act shall take effect and be in force from and after its passage and approval.

Passed the house January 7, 1901.
Passed the senate January 5, 1901.
Approved January 7, 1901.

G. W. DUKES,
Principal Chief, Choctaw Nation.

[Act of the Chickasaw legislature.]

AN ACT To provide for the protection of the Choctaws and Chickasaws from the citizenship claims of those persons known as "court claimants."

Whereas many persons who are not Choctaw and Chickasaw Indians have fraudulently procured what purport to be judgments of the United States court in Indian Territory, declaring them to be members of the tribes and entitled to allotment and distribution of tribal property, and thereby said tribes will lose several millions of dollars in lands and tribal property unless immediate steps be taken to defeat the claims of said persons, jointly with the Choctaws: Therefore

Be it enacted by the legislature of the Chickasaw Nation, That the governor of the Chickasaw Nation is hereby authorized to enter into a contract, jointly with the principal chief of the Choctaw Nation, with some suitable person or persons, to defeat the claims of said "court claimants," under said alleged judgments; and before allotment and distribution of tribal property, as provided by treaty, the proper officer of the United States Government, having the same in charge, shall set apart so much of the funds of the Chickasaws as may be sufficient to pay the proper proportion of the Chickasaws, or one-fourth of the aggregate compensation which may be due under said contract authorized to be entered into under this act, and to pay the same as may be provided in said contract: *Provided*, That the compensation to be paid under said contract shall be a per centum of the value of the lands and tribal property which said "court claimants" would have received in the event of allotment and distribution of tribal property to them, to be fixed in said contract by the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation, who shall also, for the purpose of ascertaining the aggregate amount due under said con-

tract, agree as to the value of the lands and tribal property which each of said "court claimants" would receive in the event of allotment and distribution of tribal property to them: *And provided further*, That such compensation shall be contingent upon the defeat of the claims of such persons and the protection of the tribes therefrom.

Passed the house January 10, 1901.
Passed the senate January 10, 1901.
Approved January 10, 1901.

D. H. JOHNSTON,
Governor, Chickasaw Nation.

Third. That the particular purpose for which this contract is entered into is to secure the services of the said Mansfield, McMurray & Cornish, parties of the second part, in preventing allotment or distribution of tribal property to those persons who claim right thereto under alleged judgments of the United States court in Indian Territory, rendered under the act of Congress approved June 10, 1896, and known as "court claimants."

Fourth. That the special thing to be done under this contract by the said Mansfield, McMurray & Cornish, parties of the second part, is to render their services, to the end that allotment or distribution of tribal property may be refused such so-called "court claimants."

Fifth. That the basis for the services herein contracted for by the said Choctaw and Chickasaw nations, parties of the first part, and agreed to be performed by the said Mansfield, McMurray & Cornish, parties of the second part, is the claim to allotment or distribution of tribal property under said alleged judgments by said so-called "court claimants."

Sixth (*a*). That the compensation of the said Mansfield, McMurray & Cornish, parties of the second part, under this contract, shall be nine per centum of the value of the shares of tribal property which such of said so-called "court claimants," as hereinafter defined, as may be refused allotment or distribution of tribal property would have received in the event of allotment or distribution thereof to them, whether from past or future services to this end; and that, for the purposes of this contract, it is agreed that the share of tribal property a "court claimant" would receive, in the event of allotment and distribution thereof to him, is of the value of four thousand eight hundred dollars, and is hereby so fixed; and the term "court claimants," as herein used, shall include all persons whose names were embraced in what purported to be judgments of the United States court in Indian Territory, admitting them to Choctaw or Chickasaw citizenship under the said act of Congress approved June 10, 1896, and all persons who have been born to, or become intermarried with, them and who are claiming rights thereby.

(*b*) That such compensation shall be due and payable by the Treasurer of the United States, at the Treasury, out of any funds of the Choctaws and Chickasaws in the hands of the Government, in proportion of three-fourths out of Choctaw and one-fourth out of Chickasaw funds, whenever the roll of those persons entitled to allotment and distribution of tribal property shall become final;

(*c*) That compensation shall be ascertained and paid in the following manner: That the said Mansfield, McMurray & Cornish shall present to the Secretary of the Interior a true and correct list of such so-called "court claimants" as herein defined, and he shall, by comparing said list with said final allotment roll, ascertain the number of such "court claimants" refused allotment or distribution of tribal

property, and also the aggregate value of the shares of tribal property which such persons would have received in the event of allotment and distribution thereof to them, by applying to such number of persons the value of a share of tribal property, as herein fixed, of which aggregate sum the said Mansfield, McMurray & Cornish, parties of the second part, shall be entitled to nine per centum. The Secretary of the Interior shall certify the amount thus due the said Mansfield, McMurray & Cornish under this contract, and upon such certificate payment shall be made as herein provided.

Seventh. That the fixed time for which this contract is to run is five years from March 4, 1901.

In testimony whereof we have hereunto set our hands at Sherman, Tex., on this January 17, 1901.

GILBERT W. DUKES,
Principal Chief, Choctaw Nation,
on the Part of Choctaw Nation,
DOUGLAS H. JOHNSTON,
Governor of the Chickasaw Nation,
on the Part of Chickasaw Nation,
Parties of the First Part.
MANSFIELD, MCMURRAY & CORNISH,
Parties of the Second Part.

I, J. D. Woods, a judge of a court of record within and for Grayson County, Tex., do hereby certify that Gilbert W. Dukes, principal chief of the Choctaw Nation, and Douglas H. Johnston, governor of the Chickasaw Nation, and Mansfield, McMurray & Cornish, on this January 17, 1901, at Sherman, Tex., executed in my presence the foregoing contract, to which the Choctaw Nation and the Chickasaw Nation and Mansfield, McMurray & Cornish are interested parties, as stated to me at the time; and that the said Gilbert W. Dukes, principal chief of the Choctaw Nation, and Douglas H. Johnston, governor of the Chickasaw Nation, and Melven Cornish, a member of the firm of Mansfield, McMurray & Cornish, were personally present and claimed to be authorized to make such contract by acts of the general council of the Choctaw Nation and the legislature of the Chickasaw Nation.

[SEAL.] J. D. WOODS,
Judge of Grayson County, Tex.

In the Choctaw and Chickasaw citizenship court, sitting at Tishomingo, in the Indian Territory, December term, 1904.

In the matter of the petition of Mansfield, McMurray & Cornish, "the attorneys employed by contract dated January 17, 1901, with the Choctaw and Chickasaw nations," to have the court "fix reasonable compensation" for services rendered in the trial of "court claimant" citizenship cases, under the act of Congress approved March 3, 1903 (Indian appropriation act).

Present and presiding the honorables Spencer B. Adams, chief judge, and Walter L. Weaver and Henry S. Foote, associate judges.

December 5, 1904, this matter coming on for consideration and decision, the following proceedings were had, to wit:

Mr. CORNISH. According to my investigation of the docket, the opinion just handed down completes the trial of all cases and the opinions have all been handed down.

Mr. MANSFIELD. May the court please, I desire to file with the court an application upon our part under the law, provision of law which created this court, to have our fee for services performed in these citizenship matters fixed by the

court, and we desire to offer certain documentary evidence and oral testimony before the court as to the value of the services performed and what a reasonable compensation would be.

Judge ADAMS. Suggest that you read your application.

Mr. Mansfield reads application to have court fix fee for services performed in the trial of "court claimant" citizenship cases.

Judge WEAVER. Do you allege that you performed the services called for by that contract?

Mr. MANSFIELD. Yes, sir; I think we do sufficiently, but I will examine that.

Judge FOOTE. Ought to be an averment that you well and truly performed all the duties that you performed. I would gather from what you read that it did that.

Mr. MANSFIELD. It says that the services were completed under the contract.

Judge FOOTE. Does not say that the services were performed.

MELVEN CORNISH, being called as a witness on behalf of the petitioners, after being first duly sworn, testified as follows:

If the court please, in the beginning of my evidence I wish to state that I am the junior member of the firm of Mansfield, McMurray & Cornish, of South McAlester, Ind T., the attorneys employed by the Choctaw and Chickasaw nations, by contract dated January 17, 1901, for the purpose of protecting the interests of the Choctaw and Chickasaw nations in the trial of what are known as "court-claimant" citizenship cases, which cases have now been tried and disposed of by this court, and my testimony is to be given in connection with the application which has just been made to the court for the entering of a decree fixing the compensation for such services under the act of Congress approved March 3, 1903, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1904, and for other purposes."

An examination of the records of the court will show that the "court-claimant" citizenship cases have been tried at South McAlester and at Tishomingo. The cases originally tried by the United States court for the central district of the Indian Territory at South McAlester have been transferred or appealed to this court and placed upon its South McAlester docket, and the cases which were originally tried before the United States court for the southern district of the Indian Territory at Ardmore have been transferred or appealed to its Tishomingo docket and tried at Tishomingo. This statement is not entirely correct, for the reason that as the work of the court progressed in many cases it suited the convenience of counsel and the parties to transfer a few cases from the South McAlester docket to the Tishomingo docket and a few from the Tishomingo docket to the South McAlester docket. The original statement is correct with that modification. An examination of the records of the court will show that there are 134 cases on the Tishomingo docket and 129 on the South McAlester docket, taking into consideration the transfers to which I have just referred.

Judge FOOTE. Do you propose to put in the "test suit?"

Mr. CORNISH. Yes, sir. A further examination of the records of the court will show that the total number of persons who have sought to invoke the jurisdiction of this court are 3,410. Of that number 153 have been admitted, 2,808 have been denied, and the applications of 449 persons have been dismissed, the court holding that it had no jurisdiction to entertain their petitions.

The court will understand that it is our view that in fixing our compensation the cases which have been actually tried before this court should not only be taken into consideration, but that the court should take into consideration the applications of those persons who were denied as a result of the disposition of the "test case," known as the case of "The Choctaw and Chickasaw Nations *v.* J. T. Riddle et al.," No. 1 on the South McAlester docket. In order that the record may show the exact condition with reference to their condition, I will state that at the time the legislation was passed creating this court and vesting it with jurisdiction to try these cases, the persons known as "Court claimants" were in the enjoyment of what purported to be final favorable judgments rendered by the United States courts for the central and southern districts of the Indian Territory, and under the legislation the tribes were privileged to institute the test suit, which was done, and the disposition of that "test" suit was in favor of the nations, and the decree of the court was that all favorable decisions of the United States courts for the central and southern districts of

the Indian Territory were set aside, vacated, and null and void. Under the same legislation the persons who were thus deprived of favorable judgments were privileged to apply to have their cases transferred to this court, for trial anew on the law and the facts. A great majority of the persons who were originally in the enjoyment of favorable judgments of the United States court for the central and southern districts of the Indian Territory transferred their cases to this court. Some did not, and as a result of that "test suit" the applications of persons who did not transfer their applications to this court were disposed of just as effectively, so far as the nations were concerned, and they were denied as effectively as the persons who pursued the course of having their cases transferred to this court and who were denied. We have a representative at Muskogee to-day, making an examination of the official records of the Commission to the Five Civilized Tribes, and I will want to state in my supplementary statement at South McAlester the exact number of persons who had original favorable judgments from the United States courts for the central and southern districts, and who did not appeal to this court.

Judge WEAVER. Are you now prepared to state how many people were affected by the "test suit?"

Mr. CORNISH. No, sir. I will give that to-morrow. In addition to that class of persons there are pending before the Commission to the Five Civilized Tribes the applications of a vast number of persons who have been born to or who have intermarried with the persons who had original favorable judgments of the United States courts for the central and southern districts of the Indian Territory, and I will on to-morrow give an exact statement of the number of such persons, to be added to the figures which I have given to-day. In considering the number of persons whose application for citizenship have been denied or who have been denied as a result of the "test suit" it will be necessary for the court to take into consideration the value of a citizenship, or rather the value of a citizenship claim—the value of the tribal property which these persons would have received in the event of their final enrollment. The tribal property which a person who is finally enrolled as a citizen of the Choctaw or Chickasaw nations would receive is, according to our view, of the value of approximately $5,000. The land which an allottee receives at this time under existing law, his first allotment, is land equal in value to 320 acres of the average land of the two nations. After those allotments are completed it is estimated by the officials that there will be a vast area of surplus or unalloted lands. These lands will either be reallotted or sold and the proceeds divided per capita. In addition to that each citizen has his interest in the coal and asphaltum fields in the Choctaw and Chickasaw nations, which will be sold and the proceeds divided among the members of the two tribes. In addition to that each citizen has his interest in the proceeds of the Chickasaw freedmen lands, which aggregates approximately $1,000,000. In addition to that each citizen has his interest in the invested moneys of the tribes in the hands of the United States, which funds resulted from the sale of their lands east of the Mississippi, and which has been held for a number of years. In the contract, a copy of which has been attached to the petition to this court, the governors took into consideration the value of an allotment as they saw it and understood it and fixed the value for the purposes of the contract at $4,800.

Mr. MANSFIELD. Is it your testimony at this time that in your judgment you state that you are familiar with the facts which would make you form an opinion as to the value of an allotment—that is, the moneys of the nations, their lands and resources generally—and do you consider that the amount fixed by the governors is a fair valuation of an allotment?

A. Yes, sir.

Judge ADAMS. In this contract?

A. Yes, sir.

Judge FOOTE. Have you any knowledge as to the value of these surplus lands and the coal lands and what money there is in the Treasury?

A. The value of the coal lands and the surplus lands could only be approximated. No person can unerringly arrive at the exact value, and the aggregate at which the governors arrived and as I now fix is approximately that of the information of the public generally. Further answering your honor's question, the moneys in the hands of the Government of the United States are definitely known.

Judge FOOTE. Not known to us. Will have to be furnished by some testimony.

Mr. CORNISH. The invested funds of the Chickasaws in the hands of the Government are $1,200,000, and the invested moneys of the Choctaws are between $900,000 and $1,000,000, according to the information which I have.

I wish to state briefly the conditions existing at the time the contract, a copy of which has been filed with the court, was entered into, and the conditions existing in the Choctaw and Chickasaw nations at the time the work which has been performed in this court was undertaken. Before passing from this particular subject, if your honors have any further questions along that line I would be glad to answer them.

Judge ADAMS. I have some questions that I desire to ask you, but I did not desire to interrupt you. Will let you get through and then ask such questions as I desire.

Mr. CORNISH. In 1899 we were first employed by Governor Johnston, of the Chickasaw Nation, to attend to some matters affecting the interests of the Chickasaw Nation then pending before the Commission to the Five Civilized Tribes and the Department of the Interior. The decisions of the United States courts for the central and southern districts of the Indian Territory admitting these persons to citizenship had been rendered two years before that time. As our relations with Governor Johnston progressed, he advised us that according to his view these proceedings should not stand; that a great injury had been done the tribes, and that it was his earnest desire that some provision be made to defeat the claims of these persons. We took the matter under advisement and investigated both the law and the facts, and became convinced in the summer of 1899 that the statements of Governor Johnston were true, and that report was made in the fall of 1899, and he stated and we realized that there was no provision whereby the work could be undertaken with any degree of certainty as to compensation. Governor Johnston assured us in the fall of 1899, as did Governor McCurtain, of the Choctaw Nation, that if, in our judgment, there seemed reasonable probability of defeating these persons, the legislative bodies of the two tribes would be called together and provision made for our compensation, contingent upon success.

Governor Johnston and Governor McCurtain realized, as did we, that since these were final judgments, and since they had in a way been affirmed by the Supreme Court of the United States, that the only effective means of relief was to come through legislation, that provision must be made for the retrial of these cases, and it was along that line that our labors were directed. At that time the Government of the United States realized that the Atoka agreement, which had been ratified in 1898, was not sufficient, and they asked the tribes to enter into a new and supplementary agreement. Governor Johnston and Governor McCurtain replied through us that they were not willing to enter into a supplementary agreement, unless a provision could be inserted in the agreement providing for the retrial of these cases and providing a possibility of relieving the tribes of these wrongful proceedings. The first supplementary agreement was entered into in the fall of 1899. We were present representing the tribes, but that agreement failed of ratification. The second agreement was made in the spring of 1900. We were present at these meetings, and a provision exactly like the one before inserted therein, but that failed. The third agreement was made in 1901. It was made under the same conditions and circumstances and for the same purposes, so far as the tribes were concerned, as the two preceding agreements, but it failed of ratification.

The final supplementary agreement was entered into early in 1902, was ratified by Congress on July 1, 1902, and by the Choctaws and Chickasaws on September 25, 1902, and contains a provision for the retrial of "court claimant" citizenship cases. As stated before, at the time the work was undertaken and for nearly two years thereafter there was no provision whatever for our compensation, but as the work progressed and as we, representing the tribes, succeeded in impressing upon the Commission to the Five Civilized Tribes, the Department of the Interior, and the Congress of the United States that a great wrong had been done, and that the United Sates was a pary to it, unwittingly perhaps, it seemed reasonably probable that the Government of the United States could be so impressed as to the magnitude of these wrongs that provision would be made for retrying these cases. That stage of the work having been arrived at early in 1901, Governor Dukes, who was at that time the principal chief of the Choctaw Nation, and Governor Johnston called together the legislative bodies of the two tribes, acts were passed in January, 1901, and in the *same month* the contract, a copy of which has been filed with the court, was *entered into,* Governor Dukes then being principal chief of the Choctaw Nation

and Governor Johnston then being governor of the Chickasaw Nation. The acts of council to which I have referred are copies verbatim in the contract which has been filed with the court.

I feel that it would be practically impossible to adequately describe the difficulties which we encountered in the early history of the contest of the Choctaw and Chickasaw nations against the claims of "court claimants." We were met with every possible influence that could be exerted. These persons, after their admission by the United States court, spread themselves over the public domain of the two nations, took possession of land, and allied themselves with practically every business enterprise in the two nations. Practically every practicing attorney in the two nations was interested in the trial of these cases, and we were met from the first by the powerful influences of the "court claimants," their friends, and their business allies, not only in the Choctaw and Chickasaw nations, but in the surrounding States. With the actual conduct of the trial of these cases before this court the court is of course familiar. When the cases were transferred to this court, it became necessary for us not only to familiarize ourselves with the records of the other courts, but to make investigations into the merits and demerits of each case and to confer personally with witnesses who had given testimony before, the probability being that the same witnesses would be used before this court. These investigations in looking into the facts of the cases and in taking such other steps and to prepare the defense extended not only throughout every community in the Choctaw and Chickasaw nations, but through practically every Southern State and several States that are north of Mason and Dixon's line. Much of this work in arriving at an exact understanding of the merits or demerits of each case was done before the creation of this court, while we were engaged in connection with the work we were doing in impressing upon the Government of the United States that wrongs had been done the tribes, and this work was carried forward and systematized after the creation of the court and after the beginning of the actual trial of the cases.

By Judge ADAMS:

Q. You say, Mr. Cornish, that there were 3,410 applicants; that is the total of the applicants that were before this court?—A. Yes, sir.

Q. You mean all those brought their proceedings in this court under section 31 of the act?—A. All with the exception of approximately 400.

Q. In other words, what I want to get at is this: How many of that number had, at the time their cases were tried in this court, favorable judgments from the court below?—A. All but about approximately 400.

Q. Then the 449 that you give as being dismissals were included in that number, were those that were denied citizenship in the court below?—A. No, sir. The 449 persons that I refer to as having been dismissed are persons whose names were included in the petitions to this court, but not in the other proceedings.

Q. Does this number, 3,410, include also those who did not have favorable judgments?—A. Yes, sir.

Q. You mean had favorable judgments in the court below?—A. That can be arrived at in this way: The number of persons denied by this court is 2,808. The number of persons who had favorable judgments would be that number less approximately 400, and would be between 2,400 and 2,500. That answers the question.

Q. Is it your contention that you are entitled to compensation for those persons who did not have favorable judgments, as well as those who did?—A. It would be our view that they should be taken into consideration by the court in fixing our compensation.

By Judge FOOTE:

Q. Upon what ground?—A. On the ground that the cases have been tried and services rendered by us on behalf of the nations in the trial of those cases.

By Judge ADAMS:

Q. I understood you to say that your firm commenced work on these cases in 1889?—A. 1899.

Q. What services were performed in that year; do you remember?—A. Well, sir, as I have stated, Governor Johnston called to our attention the conditions existing with reference to these cases and directed us to make an investigation and report to him if under the law and the facts, in our judgment, there was reasonable probability these people. We investigated the law and made careful

and detailed investigation into many cases, in order to show to him and others that frauds and wrongs of the grossest character had been done the tribes.

Q. That was in 1899?—A. Yes, sir.

Q. That contract was not entered into until 1901?—A. Yes, sir.

Q. What services were performed in connection with these cases in 1900?—A. We devoted ourselves constantly to impressing upon the Commission to the Five Civilized Tribes, the Commissioner of Indian Affairs, the Secretary of the Interior, and the committee of Congress that an obligation of the most sacred character rested upon them as the representatives of the Government of the United States to heed the prayers of the Choctaws and Chickasaws and to make some legislative provision to retry the cases and relieve the tribes from the wrongs that had been done in the trial in the United States courts.

Q. In what way did you call to the attention of the representatives of the Government and Congress these matters?—A. By furnishing them with statements of the exact facts with reference to particular and individual cases and by publishing pamphlets and furnishing them to every representative of the Government of the United States who would be in a position to cooperate to that end.

Q. Did you remain in the Territory while this was being done, or did your firm or any member of your firm go to Washington?—A. Will state that in the year 1899 and all succeeding years up to 1902, while the work of educating, if you will permit the expression, the representatives of the United States, and furnishing them information in this connection, with a view of impressing upon them the facts as they existed, I will say that we made not less than a half a dozen trips to Washington each year, in connection with this work.

Q. Remain there any length of time?—A. From the beginning of the session of Congress in 1899 we were represented by a member of our firm almost constantly there. There was not hardly a time when a representative of the firm was not engaged in this work.

Q. From what period to what periods, what years?—A. 1899 to 1902.

Q. The time the legislation was secured?—A. Yes, sir.

By Judge WEAVER:

Q. Some one of you almost constantly there?—A. Yes, sir. Wish to answer more in detail. You asked me to specify how we did it. I will give one instance. In the early spring of 1900 we were then progressing with the work, and we thought we were succeeding in convincing the representatives of the Government, and we suggested that the governors call a convention of the citizens of the two nations. That convention met in the early spring of 1900 for the sole purpose of hearing our report and publishing these records for the education of Congress.

By Judge FOOTE:

Q. Furnish those facts extensively along that line?—A. Yes, sir.

By Judge ADAMS:

Q. As I understand you, when your firm commenced work upon these cases there was no provision in the law for the retrial of these cases whatever?—A. Absolutely none.

Q. Your first work was in securing this legislation?—A. Yes, sir. These cases were tried by the United States courts for the central and southern districts of the Indian Territory in 1897 and 1898. At that time the tribes felt that a great wrong had been done them, and they petitioned Congress at that time to give them relief, and Congress in 1898 passed an act providing for an appeal from these courts to the Supreme Court. That appeal was limited to the constitutionality and validity of the legislation. That appeal was taken in the summer of 1898, and the decision of the Supreme Court was not favorable to the tribes and upheld the constitutionality of the legislation and was a closing of the matter, so far as the Indians themselves felt; that the final act was the affirmance of these decrees by the Supreme Court, in addition to the fact that they were final under the law, and our employment began more than a year after the affirmance of the decrees.

Q. When your firm commenced working upon these cases the people who were known as "court claimants" were in possession of judgments and were just as much entitled to share in the distribution of the property belonging to the Choctaws and Chickasaws as an Indian about whose rights there was no question?—A. Yes, sir. They were not only in possession of judgments, but they were in actual and final possession of the lands.

Q. At what time were those judgments rendered?—A. Most of them in 1897 and some of them in 1898.

Q. Have the Choctaw and Chickasaw nations regular attorneys?—A. Yes, sir.

Q. Your firm are the general attorneys?—A. Yes, sir; we represent the tribes in all matters.

Q. General attorneys of the Choctaw and Chickasaw nations?—A. Yes, sir.

Q. At what time did your firm become attorneys for these nations?—A. Our first employment by the Chickasaw Nation was in the summer of 1899, and our first employment by the Choctaw Nation was in the late fall of 1899.

Q. Then your firm did not represent these Indian tribes when these judgments were obtained?—A. No, sir. The decisions had become final more than a year before our first employment by either nation.

Q. What amounts, if any, have been paid your firm in the way of expenses or otherwise in securing the legislation that led up to the retrial of these citizenship cases?—A. Nothing.

Q. Nothing has been paid your firm whatever from the Indian governments?—A. No, sir. We have borne those expenses.

Q. In the law creating this court, section 33, I find this provision: "All expenses necessary to a proper conduct on behalf of the nations of the suits and proceedings provided for in this and the two preceding sections shall be incurred under the direction of the executives of the two nations, and the Secretary of the Interior is authorized, on the certificate of said executives, to pay such expenses as in his judgment are necessary out of the joint funds of the tribes in the hands of the Government of the United States." As I understand that law, it is provided that you shall be paid your expenses in the trial of these cases?—A. Yes, sir.

Q. Is the fee that you have asked here—does that include your expenses or is that outside of your expenses?—A. Of course the law is that the expenses shall be outside of the fee.

Q. What is your contention?—A. Our view is that your honor correctly states it; that our expenses were to be paid out of the funds of the tribes and the fee another matter, but will state that we have never been paid a dollar under the law. As the work progressed for the first five or six months our accounts were prepared in accordance with the rules and requirements——

Q. Wanted to know whether you are claiming the fee as the fee proper, or whether it is expenses or anything else?—A. Just state on that that we have always considered that our expenses should be paid as a separate matter, but none of our expenses have been paid. We have made provision ourselves for all expenses we have incurred, not only in the work before the creation of this court, but in the actual trial of the cases, and no money has been paid on our expense accounts under the law which has just been read.

Q. Your contention is that that law will allow the expenses incurred in securing the legislation?—A. No, sir; it is not.

Q. Your firm claiming no expenses, as far as expenses go, for services rendered prior to the passage of the act?—A. No, sir; our view is that all expenses incurred in connection with the work up to the creation of the court would be included in the fee.

Q. Don't know whether you fix the amount that you are claiming?—A. For services rendered?

Q. Yes, sir.—A. No, sir.

Q. What do you consider your services reasonably worth?—A. We feel that the court should take into consideration the number of allotments or rights of citizenship which have been saved as a result of our efforts, not only directly before the court, but indirectly in connection with the test suit and persons who have been born to or intermarried with persons before the court; and after the number has thus been arrived at, or approximately arrived at, the court should take into consideration the value of a right of citizenship and that the application of the money value of a right of citizenship applied to the number of rights of citizenship which have been saved the tribes would aggregate a certain sum of money, and we feel that our compensation should be a proportion of the tribal property thus saved; and as to what that proportion is we feel that the rate which was fixed and agreed upon by the interested parties in pursuance of acts of the legislative bodies of the two tribes as set forth in the contract, a copy of which has been filed, should be highly persuasive with the court. We feel that the rate is a reasonable rate.

Q. As I understand you the contract fixes a 9 per cent basis?—A. Yes, sir.

Q. You are of the opinion that that is a reasonable compensation?—A. Yes, sir; we feel that the services rendered in connection with the trial of the cases and in connection with the whole subject are such as to warrant that compensation; we feel that 9 per cent of the property saved under the condition which we have set forth is a reasonable compensation.

Q. Are you prepared to state to the court what the fee would amount to?—A. No, sir; but will do so in my supplementary evidence on to-morrow.

By Judge WEAVER:

Q. Do you know from an inspection of the record of the United States district courts for the central and southern districts of the Indian Territory how many people there were who had favorable judgments in said courts and who were affected by the decision in the test case?—A. I will state that I will furnish the court an exact schedule on to-morrow.

Q. Will ask further if you claim that you ought to have a percentage of the amount saved to the nations, and that in ascertaining that amount that was saved this court ought to take into consideration, first, the total number of people who were plaintiffs before this court, no difference what became of their suits, except those who were admitted, that those should be deducted; that is, those who were dismissed for want of jurisdiction and those who were denied?—A. No, sir. We ask the court to take into consideration the persons who have been denied by this court; we are not asking compensation for those who have been admitted.

Q. Do you ask compensation for persons whose cases have been dismissed?—A. Yes, sir. The court will understand that the 449 persons who have been dismissed by this court are in many instances persons who since the rendition of the original judgments have intermarried with or been born to persons who were denied by this court. We feel that those persons should be taken into consideration. We will get at that in this way, not by considering the 449, but they will come in the schedule which we will introduce from the Commission to the Five Civilized Tribes—persons who are intermarried with and born to persons originally included in the original judgments of the United States courts.

Q. Do you claim that you also ought to be entitled to a fee by reason of there being a considerable number, or any number, of people who were affected by the test suit and did not come into this court?—A. Yes, sir; we feel that they have been denied just as effectively as if they had been transferred to this court and decree entered against them by this court.

Q. Did I understand you to say in regard to the expenses incurred that you yourself bore them and that they have not been repaid to you?—A. Yes, sir.

Q. Do you think that is a matter to be determined outside, that this court should consider them or that they should be undertaken outside?—A. We think that one thing, the hazard and great uncertainty, should be taken into consideration by the court, and should be highly persausive with the court; that we began only in the hope of ultimately receiving a compensation contingent upon success and the fact that we have borne the expenses from the beginning to the end, and we think that that if taken into consideration would be highly persausive with the court.

Q. Is it your idea that the court should consider the amount of these expenses in your fee?—A. Not necessarily. We would have no difficulty in furnishing the court an almost exact statement of expenses incurred in the trial of the cases, but would have difficulty in furnishing information as to what expenses were incurred before the passage of the legislation, were incurred in going to and from Washington and in various other cases, and no itemized statement was kept, for the reason that we were bearing them ourselves.

Q. No part of those have been repaid?—A. No, sir. I would not be willing to state that no part of them have been paid, because under some conditions in our relation with the tribes more than one matter of business was undertaken at the same time and possibly in that way some of those expenses have been paid, but a very inconsiderable portion.

By Judge ADAMS:

Q. I don't see how you can contend that the court should take into consideration the expenses incurred in the trial of cases in this court.—A. I said that that would be an outside and separate matter.

Q. What I wanted to get at, not what you had expended since the connection with the trial of the cases, but I wanted to ascertain whether or not the Indian governments had paid your firm expenses or otherwise anything in connection

with this legislation, running up to the trial of these cases?—A. No, sir; they have not paid such expenses.

Q. Has expenses otherwise been paid?—A. I stated in response to Judge Weaver's question that I would not be willing to make the statement that no part of these expenses have been paid. For instance, we have some other business for the tribes, and it might be possible that we would make a trip, and the expenses in that matter would be paid. If any part of them have been paid, it is a very inconsiderable portion.

By Judge FOOTE:

Q. Do I understand you to say that you may have performed services under a specific agreement as general attorneys and also in connection with these things, and that the money was paid you under the specific agreement, and you performed without additional expense matters connected with this matter?—A. We have certain specific services to perform.

Q. The exception you make here was perhaps on occasions when you were employed in your regular business for them; you attended to these matters, and the expense was for the regular business as well as this?—A. Yes, sir.

Q. And that covered it?—A. Yes, sir; but that a very inconsiderable portion; was not a considerable portion.

Q. Did I understand you to say that all the expenditures which you made and the services performed by you prior to the act that created this court, in the endeavor to get legislation, that you have not received compensation for them?—A. Yes, sir.

Q. You make no claim for them in the consideration of your fee?—A. Think that is to be taken into consideration.

Q. Taken into consideration in the contingent fee to be allowed here?—A. Yes, sir.

Q. The other expenses, you do not claim that they are to be covered by this fee, do you?—A. No, sir.

Q. Would like to know what estimated value has been placed upon the allotments and what estimated value has been placed upon the surplus lands and coal lands.—A. Will go over that in the supplementary statement which I shall make on to-morrow.

Q. I was going to ask the same question that Judge Weaver asked, whether you claimed compensation for those defeated by the "test suit," whether they should be included in your services?—A. Yes, sir; and I will furnish the exact number of those persons.

Witness excused.

GEORGE A. MANSFIELD, being called as a witness on behalf of the petitioners, after being first duly sworn, testified as follows:

May the court please, in giving my testimony in this matter I shall proceed in a narrative form with the court. Wish to state that I am the senior member of the firm of Mansfield, McMurray & Cornish, the persons designated in the contract which is attached as Exhibit A to the petition. I am 40 years of age, and have been engaged in the practice of law since I was 21 years old. In 1899 we were consulted by Governor Johnston, of the Chickasaw Nation, and Governor McCurtain, of the Choctaw Nation, in regard to performing certain special services in connection with citizenship matters, those special services being in attendance upon the sessions of the Dawes Commission, which were held at different camping places and points throughout the Choctaw Nation, they being engaged at that time in receiving the applications of persons for the purpose of making the rolls. At the time we were consulted about being employed in these cases both the governors desired our advice as to whether or not there was any hope of defeating what were known as "court claimants," they being the persons who had secured in ninety-seven and ninety-eight judgments of the United States courts for the central and southern districts of the Indian Territory, which judgments had become final. They informed us that under an act of Congress, the date of which I am not able to give at this time, an appeal had been taken by the tribes to the Supreme Court of the United States as to the constitutionality and validity of the legislation under which these judgments were rendered.

By Judge WEAVER:

Q. That a part of the Curtis Act?—A. Yes, sir; but that case has been decided in the case of Stephens *v.* Cherokee Nation, and had been decided unfa-

vorably to the tribes. They informed us that they had consulted various attorneys in regard to this matter, Governor Johnson having consulted General Paine, at Washington, who had been the attorney of the Chickasaws for many years, and other parties, and Governor McCurtain having consulted Charles B. Stuart and other parties, and that they had been informed that the appeal as to the constitutionality of the act having been prosecuted to the United States Supreme Court and decided adversely to the tribes, that there was absolutely no hope of defeating these persons. The governors, however, seemed to attach a great deal more importance to this matter than they did the work before the Commission, and that notwithstanding this they wished to know our opinion about the matter. I told Governor Johnston that I would not undertake employment along the line that we could defeat these persons until I could examine into this matter, and that I understood these judgments became final, and they told us that great wrong had been done their people. During the early part of 1899 we performed these specific services in this matter. I told the governors that I would proceed to look into the matter, and they promised us that if we could offer any substantial hope of success they would call the legislative bodies together and provide for our compensation, contingent upon success. I am, perhaps, better qualified to testify about what was done in this matter than either Mr. Cornish or Mr. McMurray, for the reason that I had this matter in especial charge to make investigation into the validity of these judgments, and spent the time that lawyers usually would in investigation. We spent almost the remainder of the year in examining not only the judgments themselves, but into the facts of particular cases, to see what could be done if proper legislation was secured, and as a result of our investigation we found in the United States court for the southern district certain names had been fraudulently entered in these judgments—that is, that names had been included in the judgments of which the court had no jurisdiction—and upon motion, pursuing this labor, and after informing the governors of what we had discovered, we struck out 240 names.

Judge FOOTE. You had them struck out?

A. Yes, sir; upon motion the names of about 240 persons from these judgments, so that these names never came to this court. I state that we may receive the benefit of that, as I think we are entitled to it, although the contract had not at that time been entered into; that we are entitled to have that considered by the court. We informed the governor of what we had done, and about the same time of the conclusion that we reached that these judgments were vulnerable and that we might on that account secure relief for the tribes. That was in 1899. Acting on that we filed with the Dawes Commission a demand that they refuse to enroll all persons who claimed enrollment by reason of these judgments, and appeared before the Commission and argued that question and insisted that the Commission should deny these persons for the reasons urged by us as to the validity of the judgments. We then went to Washington and remained there a considerable time and presented this matter to the Secretary of the Interior and endeavored to argue the question with him, so as to convince him of the doubtful character of these judgments. The Secretary did not seem to appreciate the point alleged by us, and, in fact, we did not get any material results at that time. He seemed to be adverse to even understanding the proposition.

We then returned to the Indian Territory and prepared and filed two suits, one in the United States court for the central district and one in the United States court for the southern district, asking to have the courts vacate and set aside these judgments by the exercise of their jurisdiction in certain particular cases, the object of that being to arrest the attention of the Government and, if possible, to compel them to take some action in regard to these matters. Immediately after those suits were filed the Dawes Commission, in an official communication, after consultation with us, notified the Department that such suits had been filed, and after considerable correspondence we were notified to come to Washington for further conference with the Department about this matter upon this ground, the Department stating that if there was anything in our contention that some tribunal should be organized to speedily dispose of that question rather than to leave the matter to be appealed through the courts in the usual way, or, as better stated by the Secretary, he said that he felt in matters of this great importance that he should not proceed without having these matters settled. Having attained the end sought by us, we proceeded to negotiate a treaty, and, as stated by Mr. Cornish, the first two failed of ratification. I think we got the first one there too late to receive the attention of

Congress at that session of Congress, and the treaty under which this court was created was directly the result of the efforts put forth by us, and we secured for these tribes under this employment the provision which created this court sent here to try these cases.

After the creation of this court it became necessary to ratify this treaty, and I think I may say positively that the efforts of our firm secured the ratification of that treaty by these tribes and resulted in the establishment of this court. We then appeared before the court under our employment and filed the proceeding provided for by the act creating this court, known as the "test suit." That matter was argued before the court, was a very hotly contested proceeding, and the court sustained our position and vacated all these judgments. In a few weeks afterwards the bar of the Indian Territory, who were generally engaged in these matters, held a meeting and appointed two of their number to represent them and filed in the Supreme Court of the United States two proceedings, in the nature of writs of prohibition, to prevent this court from exercising the jurisdiction conferred by this act. There was one in the name of U. S. Joins, ex parte, and the other case was L. L. Blake, ex parte. That proceeding called into question the constitutionality of the provision that I have referred to. A member of our firm appeared there and argued these cases in the Supreme Court on behalf of these gentlemen, and the motion for writ of prohibition in both cases was denied.

In the meantime the work of the court had been practically suspended, owing to the pendency of these proceedings, and resulted in the trial of these cases, and we do not feel it necessary to state that the trial of these cases involved a great deal of unremitting labor of the very hardest sort on behalf of the members of the firm. I think that is a fair statement of the actual labor performed by us as much as a statement before the court could be. I desire to add this statement, owing to a certain question that was asked Mr. Cornish, and to which he replied that up to this time, our contract being a contingent contract, that up to the time that this court was created and we began the trial of these cases before the court, that while I can not state correctly the amount of money that we spent in the matter of securing this legislation, securing the creation of this court, and in the many things that were absolutely necessary because this question had become one of importance and one of almost political question, I think the members of our firm must have contributed out of their private means in the prosecution of this matter under this contract to secure this relief something like twenty-five or thirty thousand dollars, not speaking of the actual expenses in the trial of these cases; and I am not speaking positively, because Mr. Cornish and Mr. McMurray have had charge of the financial matters of the firm, but I think that we have spent that sum. As to the number of persons who have been deprived of favorable judgments and as to the data referred to by Mr. Cornish, I think that I shall ask the court, and our idea is that I be permitted to append a statement—a list of the persons—to my testimony and have it marked Exhibit A, to furnish the court with such information as would be proper in arriving at this amount.

There is one other matter before I go into the question of what I think our fee ought to be, and it is this, that I do not think it would be proper to testify as to what I think the construction of the law ought to be under which this contract was fixed. If the court should arrive upon the point as to quantum of merit, then we would be entitled to all services before this court, besides those defeated in the court here—all those who were dependent upon them. If the court is to take the other view, their conclusions would be based upon persons actually deprived of favorable judgments, but we think that includes all persons who were dependent upon persons holding favorable judgments—for instance, persons who intermarried with them and persons born to them—that in dealing with the Government as persons whose rights were derived from these judgments, that when this court handed down opinions denying the persons from whom they derived their claim, and they were denied by a coordinate branch of the Government as a result of the decision in this court, we therefore insist that they be taken into consideration by this court.

I now desire to express an opinion as to what the fee should be, and before expressing that opinion I desire to make a statement of the conditions that prevailed when this contract was entered into. At the time we entered into this contract with the tribes there was hardly a probability of success in the matter that we undertook. In fact, so remote was the possibility of success that the tribes themselves were not willing to do anything except to make a con-

tingent contract such as they entered into. The judgments had become final. The persons who were in the Territory and had the ear of Congress and the Departments and the persons who held these judgments and entered into possession of these lands constituted a very powerful faction in the Indian Territory, and the possibility of defeating these persons was looked upon by the best-informed persons everywhere as being so remote as not being worthy of being taken into consideration.

It is my judgment as a lawyer that this contract was not only reasonable and just, but it was the most reasonable and just ever entered into by any Indian tribe, and not only were the Indian people of sufficient intelligence to know that it was a just and advantageous contract, as shown by the action repeatedly in different political matters when this was made an issue, but it is my statement to the court that under similar circumstances any business man would have entered into this contract, or any lawyer, in order to escape the labor of this work, would have entered into this contract, and I think that condition should be considered by the court in fixing the fee. Of course we have always desired to stand upon the contract as made with these Indian tribes, and I therefore make the statement that not only is that a good contract so far as they are concerned, but that any business man would give that amount in the same way that these Indian tribes did, and it is therefore my testimony that the sum of 9 per cent upon all sums that we have been able to save the Choctaws and Chickasaws is a reasonable fee, as shown by the exhibit which I shall attach to my testimony.

By Judge FOOTE:

Q. You say sums; do I understand you to say of the values of the property? Do I understand you to say that you consider yourself entitled to 9 per cent of the values of the property saved by the defeat of these persons?—A. Yes, sir; who had favorable judgments or in the way that I have stated. I desire to say as to the value, as to how the court shall arrive at the value. I am not prepared to state correctly the amount of invested funds, but I have an acquaintance in a general way with those matters, and I will endeavor to furnish the court in this statement, statement by me, with an exact statement of those sums, and I desire to say that the amount fixed in the contract, $4,800, is not only a fair value of an allotment, but that if an investigation is made that it will show that it is below the amount these people would receive, but we are willing to take that. I think that 320 acres of the land of these nations is worth $3,200, and I think that so far as the matter can be approximated, that it is practically certain that a share of the invested funds, a share of the surplus lands, of the royalties received from coal, the sale of town sites and coal and asphalt lands when sold will amount to enough more to raise the total to $4,800 in each case. Of course it is largely in the nature of the judgment of a man as to what it is. I can not base it on anything more definite at this time. In other words, I think it would be considered by anybody that each member of the tribe would necessarily receive as much as $1,600 from these various sources.

By Judge WEAVER:

Q. In your statement just now as to the value of an allotment in lands, you consider it worth $3,200?—A. I do.

Q. Do you know what, if anything, has been the ruling price, what has been paid for the surplus allotments, by persons who are entitled to sell under existing law?—A. No, sir; I am not informed as to what the ruling price is as to the surplus, but in view of the fact that a great many of these people are not informed as to the value of the land, I would not base my opinion upon that. I am familiar with what has been paid for the possession of these lands by persons who wished to allot them, and I think that based upon that, and upon a comparison with lands of a similar character, that these lands are worth that price. The average land of the nations has been rented at from $2.50 to $3 an acre, and I am familiar with the lands in the surrounding States, and based upon that I think that these lands are worth $10 an acre—that is, what is termed average land.

Q. When they have less value than you indicate they get a larger amount?—A. Yes, sir; I believe that average land is considered—well, I can't give you any practical definition—but you saw the prairie lands that lay near South McAlester, are rated as average lands, produce 25 bushels of corn to the acre, and rent from $2.50 to $3 an acre,

By Judge FOOTE:

Q. Know whether or not some of the more valuable lands, higher priced lands, what they rent for?—A. Yes, sir; the best quality of land rents from $4 to $5 an acre, and where they receive a portion of the crop the men have received very large sums. Some of the best lands the men receive in some cases $15 and $20 an acre, where they receive a portion of the crop, and I will state further, if it is competent, that at the time this contract was entered into there was a ruling value placed upon allotments by the people of the tribes and the public generally, and that value, which I learned in the usual way from hearing people discuss the matter, was $5,000; that it was considered that the right of enrollment was worth $5,000. I don't know why it was reduced, but I know it was a fact that that was the general impression as to the value of an allotment, but my own judgment is that $4,800 is considerably below the amount.

By Judge ADAMS:

Q. I understand you to say that citizenship in the Choctaw and Chickasaw nations is worth at least $4,800?—A. Yes, sir; at least.

Q. And that the compensation agreed on by and between the representatives of the Choctaws and Chickasaws and your firm as specified in this contract which you have filed here is reasonable?—A. I think it is.

Q. Are you prepared to say what fee your firm would be entitled to, assuming that the court should find as a fact it is worth $4,800 and the court was to allow you the compensation as described in this contract, what would it amount to?—A. Can only approximate that until I can prepare that schedule. The fee, I should say, would amount to a million and a quarter dollars.

Q. Is it your opinion that that would be a reasonable fee for these services?—A. It is my opinion that that fee, for the services we have rendered these people, is exceedingly reasonable. It is my opinion that any corporation or company under similar circumstances would have gladly contracted for a fee of twice that size.

By Judge FOOTE:

Q. Considering the circumstance?—A. Yes, sir; that any railway corporation or the best business men would have been glad to pay twice that sum.

By Judge ADAMS:

Q. You say, Mr. Mansfield, that the members of your firm have spent at least $25,000 out of their own pockets?—A. Yes, sir.

Q. In connection with securing the legislation that led up to the retrial of these cases.—A. That is my best judgment.

Q. I am not speaking of the expenses that have been incurred by your firm in the trial of these cases, because that is provided for by law.—A. Yes, sir.

Q. What amounts, if any, have been paid your firm, or anyone for your firm, by the Choctaw or Chickasaw nations, or by any other person or persons, as expenses or otherwise for the services of your firm in connection with these citizenship cases in securing the necessary legislation for the retrial of them, or in any way connected with these cases?—A. Nothing has been paid us of that sort. Of course the Choctaws have paid us considerable sums of money in connection with other services.

Q. I mean these citizenship cases?—A. Nothing at all in connection with these cases, to my knowledge.

Witness excused.

J. F. MCMURRAY, being called as a witness on behalf of the petitioners, after being first duly sworn, testified as follows:

Mr. J. G. RALLS. I had expressed my desire to examine the petition filed in this case. I was not aware that the petition had been filed. I do not know whether or not the Choctaws or Chickasaws are represented here. I am interested in the result of this, and I do not know whether any individual citizen would be given hearing or not. If such a privilege would be granted, I would like to be heard in the matter.

Judge ADAMS. The petition has been filed, and any person interested, why, the court will be glad to hear from them, in order to ascertain the true facts in this matter. The petition is on file with the clerk.

Mr. McMurray. My name is J. F. McMurray. I am a member of the firm of Mansjeld, McMurray & Cornish. Since 1899 our firm has been engaged in securing legislation for the purpose of relieving the Choctaw and Chickasaw nations of what we considered fraudulent judgments obtained some years before that and known as "court claimants." Since that time this work can perhaps be called our governing purpose, and our movements have been almost wholly controlled by the demands made upon us in this matter.

Judge Adams. Mr. Ralls you made a declaration—I assumed what you said was the truth—that you married a Chickasaw.

Mr. J. G. Ralls. Choctaw; and have five Choctaw children.

Judge Adams. And you are an intermarried citizen and interested in this matter?

Mr. J. G. Ralls. Yes, sir.

Judge Adams. Now, as far as I am concerned, and I am sure my associates agree with me, we want everything to come out here that ought to, and you are not only welcome to participate in this matter, but would be glad if you would, you can look at the petition and cross-examine the witnesses.

Mr. J. G. Ralls. I did not think it would be proper for me to butt into this matter, as I thought it would be the duty of the Choctaws and Chickasaws to have a representative here; they being primarily interested in the matter, they were the ones to be affected. As I understand it, this is a proceeding under the provision of the Indian appropriation bill which provides that this court, when the citizenship matter has been finally determined, may allow a fee to the attorneys, Mansfield, McMurray & Cornish, and that if the Secretary of the Interior shall not have approved a certain contract, therein referred to, that this court shall then proceed to determine the amount of compensation. The Supreme Court of the United States has held that the lands of the nation are held by the nation, and I, of course, am not directly affected by what order this court will make; but incidentally I will be affected, for when money is taken from the Treasury of the United States that is there to the credit of the Choctaws and Chickasaws there will be that much less for distribution per capita to the members of the tribe, unless it is out of some special fund that is not to be paid out per capita. I would like to inquire of the court if the Choctaw and Chickasaw nations are represented here, for if not, my object to volunteer to represent the Choctaws and Chickasaws—and I have my serious doubts to appear before this court, stating the facts as I have stated them to this court, if I should think it necessary to fight these attorneys, if I should think it is larger than should be paid.

Mr. Mansfield. Will state in response to the inquiry made by Mr. Ralls that the Choctaw and Chickasaw nations, as he is probably aware, are not adverse to the paying of this fee to us in accordance with the terms of this contract with us; that Governor McCurtain is not here represented in person before the court, and neither is Governor Johnston; that they have sent an official communication to the court, stating their views as chief executives of the tribes, entering their appearance here; they have been notified of the time of the hearing.

Judge Foote. I concur fully with the chief judge, and, as stated, we would like for Mr. Ralls to take any part in the proceedings he desires.

Judge Adams. Mr. Ralls or any other person that is interested in this matter.

Judge Weaver. I believe it is unnecessary for me to say anything except I concur in what my associates have said. This court proposes, as I understand, to investigate this matter in the usual way and take what testimony is to be had on the subject.

J. G. Ralls. I think this, that it would not make any difference as to what I thought as a citizen if the governors have expressed a view to the court. They are the ones to speak, and, however, I do not think that I would have the right as an attorney to come in here, and that would be held to be wrong.

Judge Foote. You are one of the heirs of this estate.

Judge Adams. From your statement you are interested in this matter, and you will not only be permitted but the court would be glad if you would participate in the examination of these witnesses, cross-examining them if you desire, and produce any testimony you desire. You are on the rolls of intermarried citizens, and every Indian that is on the rolls is interested in this matter. We realize the fact that it is a very peculiar situation; that here is a contract entered into by the then executive heads of these two nations with three gentlemen, who were at that time their general attorneys and also the attorneys of both nations now. We realized the fact that there would be no person here to represent the Indians. I made a trip to Washington for the purpose of consult-

ing with the Interior Department specially, and requested that some person be sent here to represent the Indians, and the Secretary informed me that there was no appropriation for that purpose. The court would be glad—you are a representative Choctaw—and would be glad if you would take such steps as you think proper.

Judge WEAVER. I started awhile ago, when interrupted by Mr. Ralls, unintentionally, of course—I know that the chief judge and my associate are in thorough harmony with the idea that this matter should be tried and determined like any other question of facts should be tried and determined before this court, and Judge Adams, as related, made this trip to Washington, and wish to state that was done with the approbation of his associates, and that while in Washington he saw the Department and made that request, so that there may be no claim now or hereafter that this court has not afforded anybody and everybody an opportunity to appear here in this matter, so that I agree with my Chief Judge Adams. I am very glad indeed that Mr. Ralls, representing the people, himself, and the others in whom he is interested.

Judge FOOTE. I have heard what has been stated, and think the same thing.

J. G. RALLS. Before stating that I will take part in this. It is stated that the executives of the nations have expressed their views. I would like to know what those expressions are. I presume it is a part of the record in the case. I don't want to appear here and fight something that if I understood I would not fight.

Mr. MANSFIELD. I have these communications, which I had intended to file as a part of these proceedings. They probably ought to be secured together before being filed, and I will state that if the court will consider them filed I will fasten them together later.

Mr. J. G. RALLS. I notice the petition does not state any amount they ask.

Judge WEAVER. Do you desire us to suspend while you examine the papers?

Mr. J. G. RALLS. No, sir. I understand the position of the court, but don't exactly understand my own position.

Judge FOOTE. It seems to me that any party in interest in any proceeding affecting his interest would have a right to come here, like an estate in which you have an interest as an heir.

Mr. MANSFIELD. I understand Mr. Ralls to now manifest a reluctance to cross-examine the witnesses and take part on the ground that he did not understand what the position of the chief executives was about it. I thought it was pretty well understood by Mr. Ralls and every other member of the tribe that a large majority of the Choctaw and Chickasaw people, as well as the chief executives, approved this contract.

Mr. J. G. RALLS. My understanding from the Indian citizen was that there was such a contract, and I asked what about it, and I also wrote the Secretary and tried to get a copy of it, but he refused, and the Indian citizen, on behalf of Governor McCurtain, denied that there was such a contract.

Mr. MCMURRAY (resuming). From 1899 to the time that the treaty providing for this court was ratified in 1902, July 1, by the Government, we went to Washington at various and sundry times; sometimes one of us nearly all the time; nearly all the time one of us would be at Washington, and much of the time two of the firm, and some of the time all of the members of the firm. We appeared before the Interior Department and the Secretary of the Interior during all these years, and insisted that such a treaty be made as would give the Choctaw and Chickasaw people an opportunity to investigate what we thought was a great wrong which had been done by the United States courts on the Choctaw and Chickasaw people. We presented at three different times treaties which had been made by the Government and the Choctaw and Chickasaw people. When we first presented a treaty along this line we were met with a very cold reception, and were told that this was a matter that had long been settled and could never be taken up again. We remained for weeks and months and tried to explain to the Members of Congress and the Interior Department the great wrongs that had been done, and the necessity for righting these wrongs, but seemed to make no impression.

The second time we appeared we also remained in Washington for months, made a few friends to the proposition, but not many. The third time we carried the same treaty we were enabled to attract with it a good deal of attention. Were told by the Members of Congress and the committees that they were sorry that nothing could be done, but were told that the judgments were mature and that the matter had passed into history, and that nothing could be done to allow this investigation. They admitted, however, that they were sorry that

nothing could be done. Nineteen hundred and two the Choctaw and Chickasaw people made the treaty that was finally passed. It went to Washington and was there taken up by the Interior Department and the committees of Congress. We were, however, during the fall and winter of 1901, in affecting the passage of this treaty as it should be made, feeling our way as to what the Choctaw and Chickasaw people could afford to put into this treaty. Early in January, 1902, we went to Washington and remained there more than six months. This treaty was executed by the Choctaw and Chickasaw people, having been agreed to by them and the Dawes Commission in the early part of the year. It was taken up by the committees, by the Interior Department, and after a great many changes was ratified by Congress on the 1st day of July.

During all these proceedings we represented the Choctaw and Chickasaw people, abandoned everything else, almost abandoning our families, going for months without seeing them, but finally, in 1902, the treaty creating this court and permitting this investigation was ratified. The day after it was ratified the Secretary of the Interior sent for me to come to his office. I went, and there I met Judge Van Devanter and representatives from the Dawes Commission. The Secretary wanted to know if the treaty would be ratified by the Choctaw and Chickasaw people. Mr. Bixby told him that it would not be. I told him that it would be. We came home, and in every way that we could assisted the Choctaw and Chickasaw administrations in getting the treaty before the Choctaw and Chickasaw people and getting them to understand the benefits to be derived from this treaty and the good that would come to them from its different clauses, especially the "Court-claimant" citizenship clause, as it was then known. It was voted upon by both the Choctaw and Chickasaw people, and ratified. As to the expense that we have been to in this matter that we never expect to recover, I want to state that Mr. Mansfield's statement of the matter is an understatement. We have spent more money than the highest sum he named; he said from twenty-five to thirty thousand dollars, and we have expended more than $30,000 that we never expect to recover.

As to the other item, namely, the amount of money that has been expended in this court, making investigations, bringing witnesses here, etc., that has been paid by us, I want to suggest that I think we are very much entitled to credit for the expenditure of that money, for this reason: Suppose for a moment that we had not been able to furnish this money and spend it in this cause, where would this matter be to-day. If your honors should have a venture and should employ lawyers who should advance large sums of money with no hope of getting it until afterwards, I dare say you would appreciate it in fixing the compensation.

By Mr. MANSFIELD:

Q. You simply mean to say that while the law provided for the actual payment of the expenses, that no such funds were available, and that we furnished it rather than see it fail?—A. Yes, sir; that while we expected to have this money repaid, we certainly ought to have credit for furnishing this money when it was needed.

Q. What was that amount?—A. Something like $30,000.

Q. Any other general matter you want to state to the court in addition?—A. I want to state this general proposition: That at any stage of this proceeding, if we had failed in this proposition, it meant the utter ruin of every one of us financially. There has never been a time since we got well into this matter but that a failure would ruin us. We had at stake there whatever futures we might have, and it meant to win or to lose everything we had.

Q. Will ask you some questions. You stated the progress of this matter at Washington; will ask you if any opposition was encountered from the inception of this work in securing provision for this investigation?—A. Yes, sir; from every point.

Q. What was the extent of that opposition and from what sources?—A. From the court citizenship people and their attorneys. We were met with opposition at every possible point and turn in the road.

Q. Was that an organized opposition?—A. Yes, sir.

Q. Have representatives at Washington?—A. Yes, sir.

Q. Have them there during the winter?—A. Yes, sir.

Q. Endeavoring to defeat legislation for the benefit of the tribes before the committees of Congress?—A. Yes, sir; they did constantly.

Q. I don't believe you mentioned the services performed before the Dawes Commission. We performed services there, did we not?—A. I did not men-

tion that, but we were before the Dawes Commission almost weekly from the time we began until we got the treaty ratified.

Q. You speak of the negotiation of three treaties, two of which were not ratified, and one which was; what period of time was consumed approximately in the drafting and consideration of these three treaties with the Interior Department, and in ratifying the one that was ratified, what was the time that was consumed, approximately?—A. The first one took from the time we began working at the matter until Congress adjourned, and we found that it could not be ratified; I should say that it took at least a year. We were working on it until Congress adjourned. The next treaty took from that time until the close of the next Congress.

Q. As to the third treaty?—A. It took from the time we lost the second one, never quitting at all, no remission of time, took from the time we lost the second treaty until it was ratified in 1902. We were working at it constantly from its inception until it was ratified.

Q. The persons known as "court claimants" number, approximately, 4,000?—A. Yes, sir.

Q. Personally acquainted with a great many?—A. Yes, sir; especially in the Chickasaw Nation.

Q. Ask you if they were not generally distributed throughout the area of the Choctaw and Chickasaw nations?—A. Yes, sir; most of them in the lower Choctaw and Chickasaw nations.

Q. Will ask you if they were not generally men of more property and resources than the Choctaw and Chickasaws?—A. Good deal more.

Q. Is it not true that many of them were men of large means?—A. Yes, sir.

Q. In possession of the best lands of the nations?—A. Best ground in the country; most of them.

Q. Will ask you if it is not true that these persons generally distributed throughout the two nations had the noncitizen feelings of the two nations?—A. Have certainly reached that conclusion.

Q. Interested in any business enterprises?—A. Yes, sir.

Q. You speak of a lobby at Washington; will ask you if that was not maintained by these persons and those associated with them and the entire bar of the Indian Territory, with some few exceptions?—A. Yes, sir.

Q. Was there any organization of that body?—A. Yes, sir.

Q. Met and adopted resolutions in opposition to the steps we were taking?—A. Yes, sir.

Q. That organization practically included all these persons and their attorneys?—A. Included nearly all the attorneys in the two nations.

Q. Will ask you if since we have been attorneys for the nations, whether or not this question has entered generally into consideration of tribal politics?—A. It has.

Q. Has it entered into who the Choctaw and Chickasaw people should place at the head of their government?—A. It has been the dominant question since 1899.

Q. Did it enter into what was known as the treaty campaign, when this treaty was ratified?—A. It did; discussed on nearly every stump in the country.

Q. Who was in favor of ratifying that treaty providing for the carrying out of the terms of this contract and trying these cases?—A. The Choctaw and Chickasaw people as a rule were in favor of ratifying the treaty and defeating these people. There were some Choctaws and Chickasaws who followed the other people. It was opposed by the court, citizens, and the lawyers representing them.

Q. Will ask you if that treaty was not ratified by a large majority?—A. Ratified by a safe majority on September 25, 1902.

Q. Mr. McMurray, I want to ask you this general question: You have a knowledge of what the right of a person to be a citizen—that is, the privilege of allotting lands and sharing in the distribution of tribal property—would be worth?—A. I think I have.

Q. What is that generally considered to be worth in the Choctaw and Chickasaw nations?—A. Five or six thousand dollars; I think it is worth that.

Q. Do you consider the amount fixed in the contract, $4,800, a fair valuation?—A. I think it is.

Q. Our contract with these tribes fixes 9 per cent of all sums we may recover from the defeat of these persons, whom they claim to be unjustly in possession of citizenship, known as "court claimants." What would you say as to what would be an adequate compensation under that contract?—A. I think that the

amount in the contract, 9 per cent, is a very conservative compensation. I say that because this property had been lost to the Choctaw and Chickasaw people and was in the hands of other people. They were on the land and had their judgments.

Q. Were they absolutely entitled at the time we began, and did they have it distributed?—A. They did have it distributed and were so entitled, I think.

Q. Think that 9 per cent is a reasonable amount, for the reason that it is a lesser amount than is usually paid by the Indians for like services?—A. For a number of years I have had a good deal to do in Washington, and I have observed the fees that have been paid out, and in this matter I believe there is more work than I have ever known done under an Indian contract, and I think the per cent of compensation is smaller than I have known.

Q. You use the expression "like services;" do you consider the services rendered by us similar to any other?—A. I only meant services for the Indians. I don't think there has been a like service for attorneys representing Indians. Never been a condition like this.

Q. How long have you been living in the Choctaw and Chickasaw nations?—A. About nine years.

Q. You are pretty well acquainted over the two nations?—A. Yes, sir; I have lived along the border for twenty-five years.

Q. Is it a matter of knowledge to you whether or not these "court claimants" in procuring the rendition of these judgments also had contracts with their attorneys for the purpose of putting them on the roll?—A. They did.

Q. Do you know what per cent these attorneys were generally to receive for putting these white people on the roll?—A. I know, in a great many cases, they were to receive half.

Q. Will ask you if that was not the prevailing rate?—A. I think it was.

By Judge ADAMS:

Q. That the individual got, or the family?—A. One-half of what they all got.

Mr. MANSFIELD. Will ask you if it is not also true that in a great many cases the attorneys had received this half and entered into possession of the land?—A. In some cases I know that is the case.

Q. Mr. McMurray, you have testified now as to what you think, as a lawyer, a reasonable value of these services would be worth, and I believe you also testified as to what you considered an allotment worth?—A. Yes, sir.

Q. Any other matter that escaped my mind that you desire to make a statement about?—A. I don't believe there is.

Cross-examination by J. G. RALLS:

Q. You speak of attorneys for the claimants having contracts for one-half of what their clients got. Will you kindly give me the names of some of these attorneys, and give me the names of the persons with whom they had such contracts?—A. I can give you the names of a good many of the attorneys.

Q. Give us some.—A. J. G. Ralls.

Q. Give the name of the claimant with whom I had such a contract.—A. I have not seen the contract: that is the prevailing rate, as I understood it.

Q. You have given my name as one who got half of what the claimants received.—A. I think you had more than any other.

Q. Give me the name of one.—A. I can't tell you.

Q. You don't know that I had such a contract, do you?—A. No, sir; I don't.

Q. Why did you state to the court that I was one of them?—A. I said that I was naming the attorneys for the claimants.

Q. You understood my question in which I asked you to give me the name of some of the attorneys with whom they had contracted to give them half of what they got out of it?—A. You understood my suggestion when I said I would give a "court-claimant" lawyer.

Q. I was asking the names of some attorneys of claimants who were to receive one-half.—A. That is the general impression over the country, that these contracts were on a basis of 50 per cent.

Q. Give us the name of one lawyer that has such a contract and the party with whom he had such a contract.—A. They did not show me the contracts.

Q. Can you give this court the name of one attorney that had such a contract?—A. I suppose I could tell them the names of a good many.

Q. Give us one.—A. I told you that was the general report; I daresay you get the same.

Q. From whom do you get the report?—A. From having mixed throughout this country for years.

Q. Who ever told you that a certain lawyer was to get half of what his client got?—A. Heard that all over the nation.

Q. That is too general?—A. Wasn't a matter that concerned us much, but that is the general report.

Q. Who gave you the report?—A. I can't tell you any definite man that gave that report.

Q. Do you know, as a matter of fact, what any attorney representing what you call "court claimants" was to get for representing them?—A. Never seen any of the contracts.

Q. Don't know of your own knowledge?—A. No, sir.

Q. Isn't it a fact that the "court claimants," as a rule, were a poor class of people?—A. I think the "court claimants" were pretty well fixed people in lands and that they were not paying money fees, but were giving lands.

Q. In answer to Mr. Mansfield's question, you stated that the property had been divided up among the court citizens; isn't it a fact that no land had been divided or any land bought?—A. The lands had not been allotted by the Government to anybody, but they were in possession of the lands and in possession, as a rule, of the best lands in the nations.

Q. Have you an itemized statement of your expenses in securing the legislation you refer to?—A. I have not.

Q. Have you kept such an itemized statement?—A. We have not.

Q. How do you arrive at the amount that you spent?—A. We know what we put in it.

Q. How do you know what you have put in it?—A. Know that we have spent that much money.

Q. How is it that you have not kept an itemized account of it?—A. Did not keep an itemized account, because we never expected to get it back; had no claim on anybody to get it.

Q. Will ask you if at the time you were working to secure the legislation—if your firm was not employed under contract with the Choctaw Nation, under a contract of $5,000 and expenses?—A. We were.

Q. Have a similar contract with the Chickasaws?—A. Yes, sir.

Q. Did you keep an itemized statement of the expenses or what you got for fees from the Choctaws and Chickasaws?—A. You mean in connection with this treaty?

Q. I mean the amount you expended under your contract with the Choctaws; you were to have $5,000 and expenses from each nation?—A. Yes, sir.

Q. During all this time and up to this time you had a contract at $5,000 a year to represent the Choctaws and $5,000 to represent the Chickasaws, did you not?—A. Yes, sir.

Q. When you started into this and secured your first contract was with the Choctaw Nation?—A. I think it was with the Chickasaw.

Q. The second year you secured the Choctaw, did you?—A. Same year, I think.

Q. Didn't represent the Chickasaws for one year for $5,000 and expenses and the next year have a contract with both nations?—A. I think we made the contract with the Chickasaws, and my recollection is that we made the contract with the Choctaws in the same year; certainly less than a year apart.

Q. Do you know who were employed to represent the Choctaw Nation in the matter of the litigation before the Commission under the act of June 10, 1896, and before the United States courts on appeal under the provision of that act?—A. Judge Stuart and his firm represented the Choctaws in part of that work, and I think Judge Shackelford represented them in the other part.

Q. Will ask you if it isn't a fact that the firm of Stuart, Gordon & Hailey were employed at $5,000 a year and expenses to represent the Choctaws in the litigation before the Commission to the Five Civilized Tribes under the act of June 10, 1896, and before the United States courts where appeals were taken?—A. At the time these people were being put on the rolls.

Q. When the Commission was hearing applications of those who had made them under the act of June 10, 1896?—A. I don't know.

Q. Have you any information to that effect?—A. No; I don't know what their contract was.

Q. Will ask you if it isn't a fact that W. B. Johnson and General Paine were employed by the Chickasaws to represent them before the Commission and the court in cases under the act of June 10, 1896, at a salary of $10,000 a year for both of them?—A. I understood Mr. Johnson's was $8,000 a year.

Q. That included Mr. Johnson and General Paine also?—A. I don't think it did. I think he was employed differently.

Q. Then Mr. Johnson and General Paine represented the Chickasaws before the Commission and also in the United States courts in such cases as were appealed there under the provision of the act of June 10, 1896?—A. I don't know the extent of their duties. I know they were employed by the Chickasaws.

Q. You remember that Judge Stuart and his partner, Mr. Gordon, and also Mr. Hailey represented the Choctaws?—A. Yes, sir.

Q. Now at the expiration of their time Judge Shackelford, of Muskogee, was employed by the Choctaws?—A. Yes, sir.

Q. Was not he employed for $5,000 a year and expenses?—A. I don't know what he got; it would be easy to find out what he got.

Q. In the litigation before the Commission to the Five Civilized Tribes in relation to the Choctaws, it included a great many more cases than are before this court, did it not?—A. What is that?

Q. The litigation before the Commission to the Five Civilized Tribes under the act of June 10, 1896, included a great many more cases than are included before this court relating to the Choctaws and Chickasaws, did it not?—A. I don't know the number of cases that they had, Mr. Ralls.

Q. Is not it a fact, Mr. McMurray, that the number of court citizens, or those persons admitted by the United States courts for the central and southern districts of the Indian Territory, was only twenty-six hundred and some odd?—A. No; I think there were more than that.

Q. Have you noticed the report of the Secretary of the Interior or the Commission to the Five Civilized Tribes, making a statement of the number of persons admitted by the United States courts on appeal from the Commission to the Five Civilized Tribes under the act of June 10?—A. No; I have not that report here.

Q. Have you counted the number of citizens involved in the cases, both in the Choctaw and Chickasaw nations before this court?—A. No; I have not myself counted them.

Q. Have you had it done?—A. Yes; we have got a list of them.

Q. How many do you say are involved before this court?—A. I can not give you the exact number myself.

Q. You don't say there are 4,000 of them?—A. There are close to 4,000.

Q. Will you say there are as many as 3,000 before this court?—A. I think there were—those that were before the court.

Q. How many have been admitted?—A. I have not the figures.

Q. How many have been rejected?—A. I have not the figures on that.

Q. Did you ever submit to the President of the United States the acts of the Choctaw and Chickasaw councils, vesting authority in the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation to enter into this contract with your firm?—A. No, sir.

Q. Was it ever presented?—A. Not that I know of; I think it was not.

Q. You were familiar with the provisions of the treaty which required such acts to be presented within thirty days for his approval?—A. Yes, sir.

Q. Why was it those acts were not presented?—A. At that time this treaty had not been made. We had not gotten into the work, and the idea was to submit it afterwards.

Q. Never submitted to the President?—A. No, sir.

Q. Was the contract attached to your petition ever submitted to the Secretary of the Interior for his aproval?—A. Yes, sir.

Q. And was not approved by him?—A. No, sir.

Q. Then your contract based upon these acts of the Choctaw and Chickasaw councils has never been approved?—A. Neither by the President or the Secretary. The matter has been before Congress and there was an act passed relative to it, referring it to this court.

Q. At the hearing here to-day is there any person here representing the Choctaw and Chickasaw nations except your firm?—A. No, sir; we have notified Governor McCurtain and Governor Johnston, and they have written letters here, as I understand it, asking the court to ratify this contract for 9 per cent.

Q. I noticed your petition was filed to-day in the court?—A. Yes, sir. The law provides that the cases shall be completed before we ask an adjustment of this matter, before we ask that the compensation be fixed under the act.

Q. Did I understand you to say that you have been working all the time for a salary of $5,000 a year and expenses?—A. Yes, sir.

Q. In addition to that you are asking an allowance under this contract based on these inoperative acts?—A. We are asking the court to grant 9 per cent of the amount we saved these tribes.

Q. What do you base that on?—A. That contract.

Q. Contract attached to this petition?—A. Yes, sir; and under the act of Congress referring it to this court.

Q. Have you been paid $5,000 a year from each nation?—A. Yes, sir.

Q. As to these contracts the Choctaw and Chickasaw nations have complied with them?—A. They have.

Q. This is an additional compensation?—A. This is a different matter.

Q. Do you know what the ordinary salary of a good lawyer where he devotes all his time to a matter is?—A. You mean in these Indian matters?

Q. In the Indian Territory?—A. My understanding is that 10 per cent is the prevailing custom on the amount recovered.

Q. Know Judge Stuart?—A. Yes, sir.

Q. Represents the Choctaw Railroad?—A. Yes, sir.

Q. An attorney of a great many years of experience?—A. I think he is.

Q. Able lawyer?—A. Yes, sir.

Q. Know what salary he gets per annum for his legal services?—A. No, sir.

Q. Doesn't he only get $4,000 a year?—A. I don't know what he gets.

Q. Know Clifford L. Jackson, of Muskogee?—A. Yes, sir.

Q. He represents the M., K. & T. for the Indian Territory?—A. Yes, sir.

Q. And devotes all his time to that work?—A. I don't know whether he had any outside business or not.

Q. Isn't it a fact that he does not take any outside business?—A. I don't know.

Q. Isn't it a fact that he had been practicing law in the Indian Territory practically ever since a court was in the Indian Territory?—A. Yes, sir.

Q. Isn't it a fact that his salary is only $6,000 a year?—A. I don't know what he gets.

Q. Know W. B. Johnson, the United States attorney for the southern district?—A. Yes, sir.

Q. United States attorney?—A. Yes, sir.

Q. Devotes his exclusive time to the duties of the office?—A. I think he does.

Q. Isn't it a fact that his salary is $4,000 a year?—A. Yes, sir.

Q. You are acquainted with the United States judges in the Indian Territory?—A. Yes, sir; most of them.

Q. They devote their exclusive time to their official duties?—A. They do.

Q. Will ask you if their salary is not only $5,000 per annum?—A. I think it is.

Q. Will ask you if it isn't a fact that a salary of $5,000 per annum is a fair salary for attorneys in the Indian Territory?—A. Well, it is more than some of them get.

Q. Will ask you if it isn't a fair salary?—A. Taking the average attorneys, I should say it would be.

Q. In answer to Mr. Mansfield's question a moment ago you stated that the execution of this contract and the compensation was known in the campaign in regard to the ratification of the supplementary agreement; now, I will ask you if at that time a copy of the contract had been furnished to the persons who were to vote upon the treaty, so that they would know what it was?—A. I know what I know.

Q. Will ask you if it isn't a fact that the Indian Citizen, which is the official organ for the McCurtain ticket, denied the existance of the contract and said that parties who were opposed to Governor McCurtain were slandering him, and said that they were from Missouri and would have to be shown before they would believe that such a contract existed?—A. I didn't see that, but I know that you and others who were opposed to Governor McCurtain proclaimed all over the Choctaw Nation that we had a contract and were getting 10 per cent, and that it was the question in two or three campaigns, and that the Choctaw people voted against your contention.

Q. You say that I proclaimed it?—A. Yes, sir.

Q. Will ask you if it isn't a fact that I never made a speech in the campaign?—A. Know that you were telling them that.

Q. Ever hear me state it?—A. No, sir.

Q. Can you give me the name of one?—A. Mrs. Smiser.

By Judge ADAMS:

Q. Who is she?—A. Editor of the Indian Citizen.

By Mr. J. G. RALLS:

Q. You say that you don't know that she denied it in her paper?—A. No, sir; I do not.

Q. That was one of the voters the representation was made to in regard to the fee?—A. Mrs. Smiser?

Q. Yes, sir.—A. I didn't say that she was a voter; she is a citizen.

Q. I was speaking about some of the voters of the nation. Do you happen to have the name of a voter of the Choctaw Nation that heard me make that statement?—A. About this contract?

Q. Yes, sir.—A. I have not the name, but it was commonly known that you were opposed to it.

Q. It was hearsay with you?—A. You could explain that better than I could. You know better than I do, but I know that was the basis of the campaign, and you were in the campaign.

Q. Will ask you why it is you proceed to state that I was one of the attorneys that did so and so?—A. You were one of those "court claimant" lawyers, and you were understood to be opposed to Governor McCurtain; that you were taking an active part against this treaty and the contract. The contract was the chief basis of the opposition.

Q. That the reason that you said it?—A. Some of the reasons.

Q. Don't you know that the controversy in regard to the ratification of the supplementary agreement was, first, as to the Mississippi Choctaws being opposed by those who opposed the treaty, and those who were in favor of the treaty were in favor of it for the purpose of securing legislation for the purpose of defeating the court citizens, and that the question of the contract was not discussed at large, was not generally understood or known among the voters?—A. I think it was discussed ever since it was made.

Q. Since you have made the contract has it been submitted to the Choctaw or Chickasaw council for ratification?—A. The act upon which this was based was passed by both the Choctaw and Chickasaw nations.

Q. Has the contract since it was signed been submitted to them?—A. No, sir; they authorized the governors of the Choctaw and Chickasaw nations to enter into this contract and they made it.

Q. Why was it not submitted to them?—A. It was not a matter for them to approve; they passed the acts and authorized the governors to make the contracts which they made.

Q. You say you have here communications from the governors of the Choctaw Nation and of the Chickasaw Nation in regard to their views as to this contract?—A. Yes, sir.

Q. Know who wrote these?—A. Governor Johnston one and Governor McCurtain one.

Q. They write them themselves?—A. I don't know.

Q. Know anything about who dictated them?—A. I do not.

Q. They appear to be typewritten, do they not?—A. They seem to be; yes.

Mr. MANSFIELD. The court can readily see that we would not care to object to incompetent questions under these circumstances, because the governors of these tribes and the people generally are not opposed to the granting of this fee; they have sent letters here, and, as the court has stated, the Department has not sent anyone here; but still we feel constrained to suggest that the interrogation as to the average salary of lawyers that that testimony and the answers are incompetent to bear upon the point before this court, because it would not enlighten the court. This is a contingent contract and well understood by us and everybody else. The rate of compensation is based not upon what an ordinary service would be worth, but what these services are worth. As to the matter of the dictation of those letters, I think that is incompetent if it is signed by him, and I ask that his statements upon that question be excluded.

Judge FOOTE. Will ask you, Mr. Mansfield—you are under oath—I want to ask you if these documents were signed by these gentlemen and authorized to be presented here?

Mr. MANSFIELD. Yes, sir; and I think it is known to the noncitizens of the Choctaw and Chickasaw nations. Every noncitizen and the governors and a

great majority of the Choctaw and Chickasaw people are fully informed and have no objection.

Mr. J. G. RALLS. I assure him that if the Choctaw people knew these proceedings were going on, that they are asking for the fees that they are asking, and if they knew that the governors had written that letter they would be astounded to know that the man they had reposed so much confidence in had done such a thing; there would be an uprising against him, and I assure Mr. Mansfield that there are not 10 per cent of the Choctaws who would agree to this fee. Mrs. Smiser, when I told her that a $200,000 fee would go to the Chickasaw Nation, she laughed and said I was crazy. She thought that $50,000 would be all they would get out of it, and she didn't think they would get that.

By Judge ADAMS:

Q. One question I asked the other members of the firm. Have you or any member of your firm received an amount or amounts from the Choctaw and Chickasaw governments, or from any other person or persons, as expenses or compensation in any way for services in securing the legislation that assured the retrial of these cases?—A. We have not. Have not received a dollar for the money put into the work.

By Judge FOOTE:

Q. Do you consider, from your knowledge of these things, considering the services that have been rendered in this matter and the difficulties that were encountered and the labor performed, that 9 per cent is a reasonable and proper fee basis upon what has been recovered that will revert to these tribes?—A. I do; I consider it a conservative fee. In further answer to that question I would like to quote the governor of the Choctaw Nation in discussing this matter in my presence. The Secretary of the Interior asked him about the question you have asked me, and suggested to him that it would make a large amount of money. Governor McCurtain replied to him that "I think that is a very reasonable fee. You must remember that when these men get 9 cents the nation gets 91 cents in property that was lost that they have brought back and put into the hands of the Choctaw and Chickasaw people."

By Mr. J. G. RALLS:

Q. In speaking about the value of an allotment, will ask you if the Choctaws and Chickasaws and the Dawes Commission did not appraise the lands of the Choctaw and Chickasaw nations?—A. They did.

Q. Will ask you if the appraised value of an allotment as fixed by the representatives of the Choctaw and Chickasaw nations and the United States is not $1,048.28?—A. No; I think not.

Q. What do you think it was?—A. One thousand and forty-one dollars is the value that was placed upon the land; they were being given 320 acres, and is known by you and is generally known that was the value fixed for division among the people, and not the actual value of the land.

Q. Will ask you if it isn't a fact that the Choctaws and Chickasaws sold to the United States the lands taken by the Chicasaw freedmen under that act? The Choctaws and Chickasaws agreed to sell to the United States the lands held by the Chicasaw freedmen at the value to be placed thereon by these appraisers?—A. They did. However, I want to say that that was not regarded as the ruling value of the land, but only as a measure to arrange some kind of compensation to the Choctaws and Chickasaws, and it was known that that was not the value of these lands.

Q. Will ask you if these people under their oaths did not truly value the lands?—A. That is known by everybody.

Q. Did I understand you to say that the United States took from the Choctaws and Chickasaws the land?—A. They took it at a lesser value.

Q. In speaking of the benefits from the supplementary agreement which you say your efforts secured, will ask you if there was not a provision whereby 2,590 Mississippi Choctaws were identified that had been formally denied by the Dawes Commission?—A. The act that was copied into the treaty confined those that could be identified to the full bloods. Heretofore those full bloods had been in the same condition as the mixed bloods. They cut out the full bloods and they were passed upon, and the mixed bloods were left in the condition that very few of them have been admitted.

Q. Will ask you if, prior to the passage of the supplementary agreement, the Department held in order to be identified as a Mississippi Choctaw the applicants had to show a compliance with the treaty of 1830?—A. They did.

Q. Will ask you if the efforts of those full bloods to establish their rights as Mississippi Choctaws failed because they could not show a compliance with that article?—A. I don't know about that.

Q. Will ask you if the object of that provision was not put in there to relieve the full bloods of complying with the law, and to enroll them because they were full bloods?—A. I always understood the Choctaws wanted the full bloods given a piece of land, that the full blood should be taken care of.

Q. Isn't it a fact that instead of reducing the number of citizens on the roll there have been placed on there 2,500 Mississippi Choctaws, who would not have gone on there had it not been for that supplementary agreement?—A. That is a different matter.

Mr. MANSFIELD. As to the last question asked by Mr. Ralls, I desire to object on the same grounds. He refers to some provision of this treaty both as a matter of fact and of law. We are not responsible for the provision between these people and the Government relative to the Mississippi Choctaws.

Mr. J. G. RALLS. I offer that for this purpose. Evidence has been given to establish the services of these attorneys in bringing about the legislation. It would be necessary to know what it was and of the final net result of the legislation, and it is for the passage of that supplementary agreement that they are entitled to a considerable salary in addition to the litigation before this court.

By Mr. MANSFIELD:

Q. Will ask you if it is not a fact that as to the appraisement of the land, that the appraisement of the land at this low figure was made by the Dawes Commission after the provision of the supplementary treaty, after the provision was made for the trial of the Chickasaw freedmen case?—A. It was.

Q. At the time of the ratification of the treaty it was not known but that the land would be appraised at a proper value. Is it not true that as to these full-bloods that they had been identified and placed on the roll by the Commission, and that the Government of the United States, through its Interior Department, was insisting upon the enrollment of these people, and the Secretary in a message even recommended the repeal of the restrictions contained in the fourteenth article?—A. That is correct, generally.

Q. Was not the approval or nonapproval of the roll in Mississippi pending there before Congress, with the recommendation of the Secretary, at the time this treaty was made?—A. It was.

Q. Will ask you if the members of our firm who were present in the negotiations there, so far from putting anybody on the roll, if we did not resist any provision to enable any improper person to get on the roll?—A. We did.

By Judge ADAMS:

Q. Before this treaty that you speak of had been ratified was there any provision in the law to retry these citizenship cases?—A. No, sir.

Q. Then but for this treaty these "court claimants," these people who are known as "court claimants" and who have been declared not entitled to citizenship, would to-day be upon the rolls and entitled to tribal property?—A. They would.

By Mr. J. G. RALLS:

Q. In order that I may understand you, do I understand you to say that at the time of the passage of this supplementary agreement the Mississippi Choctaws had been enrolled? A. They had been listed, Mr. Ralls, in Mississippi, and had been sent to Washington with the request that they be enrolled, and they were pending there, with the report of the Secretary of the Interior asking Congress that they be put on the roll, rather asking that the restrictions in the fourteenth article be removed.

Q. Will ask you if this condition didn't exist, that at this time that Mr. McKennon went to Mississippi and made up a list of 1,900 without any evidence as to their compliance with the fourteenth article, and remained there, identified as Mississippi Choctaws, and that the Assistant Attorney-General held that they should not be identified, because they had not complied with the fourteenth [illegible]cle, and if the provision in the supplementary agreement was not inserted [illegible]lieve them? A. The Commission made a report; I don't know who wrote [illegible]port the Dawes Commission made, and that report was first sent up, and [illegible] it had been presented very thoroughly to the Assistant Attorney-General [illegible] held that these people who had not complied would have to comply, and [illegible] was that the Secretary of the Interior submitted a communication to

Congress and asked them to relieve the treaty of 1830 from the restrictions and that they be put on the roll.

Q. How many have been put on the roll as a result of that treaty?—A. I don't know.

Q. You are attorneys for the Choctaw and Chickasaw nations?—A. I have not the figures at my finger ends.

Q. Have you the figures anywhere so that you could furnish the court with them, as to those who were put on the roll as a result of the supplementary agreement?—A. We have not; you can get it from the Dawes Commission.

Witness excused.

J. M. LINDSAY, being called as a witness on behalf of the petitioners, after being first duly sworn, testified as follows.

Examination by Mr. MANSFIELD:

Q. State your name.—A. J. M. Lindsay.

Q. Where do you live?—A. Gainesville, Tex.

Q. How far is Gainesville, Tex., from the Indian Territory line?—A. About o miles.

Q. A line of railway from Gainesville into the Indian Territory?—A. The Santa Fe, running through the Chickasaw Nation.

Q. How long have you lived at Gainesville, Tex.?—A. Nearly forty-seven years.

Q. What is your profession?—A. I am in the banking business now, formerly practiced law.

Q. How long were you engaged in the practice of law?—A. Some twenty-odd years.

Q. Have you held any official position at any time in Texas?—A. I was district judge of that district at one time.

Q. What is the extent of your acquaintance, Judge Lindsay, among the people who live in the Choctaw and Chickasaw nations?—A. Quite limited in the Choctaw, fairly extensive in the Chickasaw.

Q. Are you fairly familiar with the affairs in these two nations?—A. Yes, sir; I should say so, especially in the Chickasaw.

Q. Say you are in the banking business at Gainesville, Tex., what position and what bank?—A. Lindsay National Bank, president of the bank.

Q. Are you acquainted with Mr. McMurray?—A. Yes, sir.

Q. How long have you known him?—A. Why I suppose twenty-odd years.

Q. Are you acquainted with myself, Mr. Mansfield and Mr. Cornish?—A. Yes, sir; I have known yourself and Mr. Cornish four or five years; I don't remember just how long.

Q. What is the extent of your information as to the controversy that has raged in these two nations about the persons known as "court claimants," or persons holding citizenship judgments in these courts?—A. I don't know Mr. Mansfield; I have known some of these people.

Q. Have you known of the pendency of the controversy?—A. Yes, sir.

Q. And the manner in which it was regarded by the Choctaw and Chickasaws?—A. I have kept fairly well informed about what was going on across the river.

Q. Are you acquainted with and can you state to the court the way in which they generally regarded, and everybody generally regarded, the claims of these people just after their admission to citizenship by the United States courts and the affirmative of these judgments in the Stephens case by the Supreme Court of the United States?—A. Well about the special cases referred to, I have not kept specially well informed. I knew a good many people who applied for citizenship across there that formerly lived in Texas, I had known some of them probably since I had been in Texas, and have known them a good many years, some of them.

Q. I mean whether or not these judgments were regarded as final and absolute against the nations?—A. I so understood. I understood from, I was familiar with the bar in the Chickasaw Nation, and knew a good many of them and I had occasion to discuss the matter with them and talk to them frequently about it, a good many of our bar came to Ardmore and other points, and I have heard that discussed frequently and the judgments were regarded as final, and as I understood it, the judgments shut out all possibility of defeating the claim of these citizenship claimants, judgment claimants.

Q. You remember, Judge Lindsay, of hearing at or about the time that we first announced the proposition that these judgments were vulnerable and might be defeated, do you remember of hearing of that?—A. Yes, sir; I presume so, I must have heard it soon after you announced your purpose and contention.

Q. Did that create some considerable stir among these people and the bar generally?—A. I heard frequent remarks about it, perhaps. I can not recall a definite case.

Q. You were acquainted with a good many of the lawyers of Texas?—A. Yes, sir.

Q. They discuss the matter?—A. Yes, sir; they talked about it frequently.

Q. What did they say about it?—A. Their contention was that it was final and not possible to interfere with them.

Q. During the progress of this work from the time that you first heard that we made this contention, what is the extent of your information in regard to the character of work performed by us and the general progress of the matter, are you fairly familiar with it?—A. Only in a general way.

Mr. J. G. RALLS. What you know, how do you get it, from your own knowledge or from what you have heard?

A. What I have heard from attorneys on both sides, Mansfield, McMurray & Cornish and the opposing attorneys.

Mr. J. G. RALLS. I think it is incompetent to ask him as to the extent of the labors.

Judge ADAMS. I don't see how you could object; he is not supposed to have been with them.

Mr. J. G. RALLS. The attorneys for the court claimants are not the parties to this proceeding.

Judge ADAMS. He gets it by reputation. He certainly has not been with these three gentlemen for the last four years everywhere they have been.

By Mr. MANSFIELD:

Q. You have also heard Mr. Cornish's statement before the court this morning?—A. Yes, sir.

Q. You heard my testimony before the court as to the extent of the legal services performed by us?—A. Yes, sir.

Q. And you have heard Mr. McMurray?—A. Yes, sir.

Q. Want to ask you, Judge Lindsay, from your knowledge of these matters, as detailed upon the stand by you, and from the statement of the services performed by us upon the stand in your presence, what, in your opinion, would be a reasonable compensation for the services rendered under the terms of this contract that we have filed with our petition?—A. I would state to the court, from what I have heard, from the testimony of these gentlemen referred to, and my knowledge of the conditions that existed with reference to the claims of these claimants and the attitude of the court judgments, from the fact that it seemed to be conceded by the bar generally, so far as I knew, and I was pretty well acquainted with it, that there seemed practically no means of reviewing these judgments or setting them aside; it was a very unusual case, extraordinary case; in fact, as I understood the situation and do understand it, the way was shut out by which these judgments could be reviewed. Some plan had to be devised, and that plan had to have legislative action providing some way to go behind these judgments and have an investigation. My understanding is that all that devolved upon these gentlemen when they made the contract; and in view of these things, I have some knowledge of the amount of labor they had to perform. It seems to me a case that would justify much more than an ordinary fee, if it results in fact in saving to this Territory or to the tribes in the distribution of this estate of a number of allotments—and I understand they have been denied it—it seems to me that it would be proper for you gentlemen to have a fulfillment of the contract.

Q. Will ask you another hypothetical question. You have stated that you have had considerable experience in the practice of law and are also president of the Lindsay National Bank. If, in your judgment as a business man, you yourself had had eighteen or twenty million dollars' worth of property in the same predicament, would you not have entered into that contract gladly if the parties could have assured you of their ability to collect it?—A. As I stated to the court a moment ago, it seemed to me a lost case, and I think it was so considered and understood by everybody who knew the conditions. I take it that

an individual having that amount or any considerable amount, if they could do no better, would certainly give a contingent fee of 9 per cent for its recovery.

By Judge FOOTE:

Q. Suppose no contract had existed, and this amount of property had been lost and recovered, and compensation was asked on the basis of what had been recovered under that desperate condition, whether you consider the services of these gentlemen were worth the amount mentioned in this contract?—A. I think that it would be.

Cross-examination by Mr. J. G. RALLS:

Q. You live at Gainesville?—A. Yes, sir.

Q. How long since you practiced law?—A. Fifteen or twenty years.

Q. How did you happen to be here to-day?—A. At the request of these gentlemen.

Q. What for?—A. To testify as to this case.

Q. Come through Ardmore?—A. Yes, sir.

Q. Know any attorneys in Ardmore who are practicing here?—A. Yes, sir.

Q. Judge Potter?—A. Yes, sir; he has an office in Ardmore.

Q. He is familiar with fees throughout the Territory and Texas?—A. Yes, sir.

Q. Know Mr. Johnson?—A. Yes, sir.

Q. He is familiar with the fees of this country?—A. Yes, sir.

Q. Great many lawyers live there who are familiar with the fees of this country?—A. Yes, sir.

Q. Have not been practicing for fifteen or twenty years?—A. No, sir.

Q. Will ask you if you are acquainted with any firm in Gainesville who are employed by salary, devoting all their time to their work?—A. I don't know of any salaried attorneys.

Q. Have you or your bank advanced money in the interest of this litigation?—A. We have loaned these people some money.

Q. How much does that amount to?—A. Twenty or twenty-five thousand dollars.

Q. To obtain this legislation?—A. I don't know the amount.

Q. What was the object of it?—A. They used it, as I understand.

Q. They have brought you here as a witness in their behalf?—A. Yes, sir; here, at their request, to state what I know.

Q. What you know about their work is based upon what you have been told?—A. Something of it I have been told; but I have some knowledge of it.

Q. Will ask you if it isn't a fact that a Choctaw named Dime Ainsworth, at South McAlester, is the first one to advocate the theory that these judgments could be attacked because both nations were not parties?—A. I don't know a thing about that.

Q. Don't know where it started from?—A. No, sir.

Q. You stated a while ago that if it had not been for this agreement there would have been no way to have attacked the judgments. You refer to judgments that were obtained by fraud, I presume, do you?—A. Not necessarily. I don't assume any position of that sort; I am only talking about the attitude that these court judgments were in when these gentlemen made this contract and by the general, if not almost universal, opinion of the bar of this country who were interested in it; and I will say further that I talked frequently with them.

Q. I will ask you if it isn't a fact that there was and still exists a provision that they might bring suits to vacate judgments that were obtained by fraud prior to this agreement?—A. I do not assume to be informed; I was simply telling you of the things, of the basis upon which I made the statement, from a general acquaintance and conversation with members of the bar who were interested in these things in the Indian Territory, especially in the Chickasaw Nation.

Q. Are you interested financially in the allowance of this fee, or, in other words, are you to receive any part of it?—A. No, sir.

Q. Any contract whereby you are to get any part, present or otherwise?—A. No.

Q. In what way was the loan that you made secured, or was it secured?—A. Secured by approved accounts of the Chickasaw and Choctaw nations, for expenses that were incurred in collecting this testimony and providing means for developing these cases.

Q. The contract is with a national bank, is it?—A. Yes, sir.

Q. Know that you are indictable?—A. No, sir.

Q. You are the president of the bank?—A. Yes, sir.

Q. You say that the loan is secured by an approved account on the part of the Choctaw and Chickasaw nations?—A. The law of Congress provides for the payment of these expenses, that an itemized account of them shall be kept, and that itemized account of them as they are kept are to be paid by the two nations.

Q. Have you those itemized accounts?—A. They are in the vault.

Q. Can you furnish this court with a copy of it?—A. That would be a burdensome thing.

Q. Can you bring it here?—A. Yes, sir.

Q. Why is it you have not brought it here?—A. It was not suggested to me.

Q. Know what it amounts to?—A. About the amount of money that I mentioned; I don't know exactly, but I think between $15,000 and $20,000.

Q. Has that money been advanced to the Choctaw and Chickasaw nations or the attorneys?—A. The attorneys.

Q. Are the attorneys liable to you for it?—A. Yes, sir; directly. I hold their notes.

Q. And that is the only security you have?—A. Yes, sir.

Q. Has that account been inspected by the inspector?—A. What inspector?

Q. The Government of the United States has to inspect national banks?—A. Yes, sir.

Q. He has seen them, has he?—A. Yes, sir.

Q. You carry that item in your bank in that condition?—A. Yes, sir.

By Judge ADAMS:

Q. Is this the provision you refer to: "All expenses necessary to the proper conduct, on behalf of the nations, of the suits and proceedings provided for in this and the two preceding sections shall be incurred under the direction of the executives of the two nations, and the Secretary of the Interior is hereby authorized, under certificate of said executives, to pay such expenses as in his judgment are reasonable and necessary out of any of the joint funds of said nations in the Treasury of the United States"—that the provision you have reference to?—A. Yes, sir.

Q. Have you furnished the money?—A. Yes, sir.

Judge FOOTE: And hold the notes of these gentlemen?

A. Yes, sir.

By Judge ADAMS:

Q. Mr. Ralls has asked you, with reference to advancing money to these people; does the fact that you have loaned them money and they owe you money—is that the reason you have testified that a reasonable compensation would be the carrying out of this contract, or is it based on your knowledge of the matter?—A. Will simply state this: If I know myself, that has nothing to do with my judgment about that matter. That is the way I feel about it and the way I think about it; that is the way I feel.

By Mr. MANSFIELD:

Q. From your acquaintance with the three members of our firm, will ask you if that line of credit extended to us for the purpose of carrying on this litigation and the paying of the actual expenses was not largely based on your belief that Mr. McMurray, Mr. Cornish, and myself would repay, in any event, that money?—A. To be sure I believed it.

By Judge FOOTE:

Q. You had confidence in the honor, integrity, and financial ability of these people to pay you outside of that?—A. Yes, sir.

Witness excused.

CLAUDE WEAVER, being called as a witness on behalf of the petitioners, after being first duly sworn, testified as follows:

Examination by Mr. MANSFIELD:

Q. State your name.—A. Claude Weaver.

Q. What is your age?—A. Thirty-seven.

Q. Where do you live?—A. Pauls Valley, Ind. T.

What is your occupation?—A. Practice of law.

How long have you been engaged in the practice of your profession?—[illegible] to practice law on the 11th day of June, 1887; been practicing law [illegible] than seventeen years.

Q. Where did you receive your legal education?—A. Univeristy of Texas.

Q. How long have you been practicing law in the Indian Territory?—A. Ten years. Ten years lacking about two months. I located at Pauls Valley last of February—month of February, 1895, about the 1st of March.

Q. You were in the Territory when what is known as the citizenship cases were decided, in the years 1897 and 1898, by the United States court?—A. Yes, sir.

Q. Are you fairly familiar with the citizenship matters of these two nations?—A. I have a general knowledge of conditions and also of legislation affecting these matters. I would not desire to speak as an expert or specialist, because my practice has been confined to civil cases.

Q. Acquainted with J. F. McMurray, a member of our firm?—A. Yes, sir.

Q. Acquainted with myself and Mr. Cornish?—A. Yes, sir.

Q. What is the extent of your general knowledge of the citizenship question and the labors performed by us in that regard?—A. From my own knowledge and also knowledge derived from others, I have a pretty accurate idea of what has been done and what has been accomplished by your firm.

Q. In the year 1899 do you think you know the way in which lawyers generally regarded the judgments?—A. Yes, sir; I know the way in which the lawyers, especially the lawyers in the Chickasaw Nation—I knew them all personally and knew all the prominent lawyers in the Territory—I know how they regarded it.

Q. How did they regard it?—A. It was the general opinion of the bar that the approval by the Federal courts in the Choctaw Nation and in the Chickasaw Nation—that is, in the central and southern districts of the Indian Territory—that the approval by those courts of the claims of these "court claimants," their judgments in their favor upon reports of masters in chancery, to whom they all had been referred, that these judgments were final and had resolved into vested property rights, and after the decision of the Stephens case, case appealed to the United States Supreme Court, in which the contention of the Indian nations was denied and these judgments finally affirmed, so far as the judgment of the Supreme Court went, it was the general understanding that that was the end of it.

Q. Did you hear at the time when we first raised this question as to the validity of these judgments upon one or two points?—A. Yes, sir.. The principal point was the contention about service; that the service had been on the governor of one nation when it ought to have been on two; I remember that when it was first raised.

Q. Can you state about what year that was that you heard that contention emanating from our firm?—A. Along about 1899, I think.

Q. Will ask you if you know how that contention was received by the bar of the Chickasaw Nation?—A. I think I do.

Q. How was it received?—A. I think that they considered it untenable.

Q. Will ask you if they didn't ridicule it?—A. Yes, sir; they laughed at it.

Q. Will ask you if any one of them ridiculed that position in the papers, the Dallas News?—A. I think a very able lawyer, in my judgment, Judge C. L. Herbert, I think he had a communication in the Dallas News in the nature of a legal argument; he also seemed rather against argument as to your position.

Q. Is it not a fact that the greater number of lawyers in the Indian Territory are engaged in the citizenship business?—A. Yes, sir; they have been.

Q. Acquainted with Mr. J. G. Ralls?—A. Met him several years ago. I think I heard him deliver a speech before the court at Pauls Valley.

Q. Will ask you if he is not understood to be largely interested in citizenship cases?—A. I have no knowledge of that; I have lived in a different section of the country; but from what I have heard I think that is true.

Q. Know Judge Potter?—A. Yes, sir; he and my father were partners in the law business in Gainesville many years ago, for about twenty years.

Q. Do you know that Judge Potter is largely and actively interested upon the other side of this question?—A. Yes, sir.

By Mr. J. G. Ralls:

Q. You answered that Judge Potter was interested on the other side of this question. You mean the question before the court at this time?—A. No, sir; I said, within my knowledge, Judge Potter represented a great number of these "court claimants."

By Mr. MANSFIELD:

Q. I will ask you this general question: Is it not true in the raising of this contention that the bar generally who had procured favorable judgments for their clients and in many cases their compensation depended upon their retaining those judgments, if it has not necessarily raised a good deal of bitter feeling between ourselves as representing the nations and those attorneys representing the "court claimants"—large amount of public feeling?—A. Yes, sir; been considerable feeling.

Q. From your knowledge as you stated in your testimony upon the stand, basing your judgment upon your knowledge of the conditions as they existed and upon the testimony of the various members of our firm that you have listened to, I want to ask you what in your opinion would be reasonable compensation for the services rendered if it has resulted in the saving the nations that we have approximately stated in this testimony?—A. Considering the fact that it was regarded as a forlorn hope or lost case, that there was no existing means by which these judgments could in any way be attacked, that courts having jursidiction to render the judgments had rendered them, that an appeal had been taken to the Supreme Court and the judgments had been affirmed and the results—the fact that the fee was taken upon an uncertainty—it would be my judgment that the contract made and the rate fixed there—9 per cent—would be extremely reasonable.

Q. Want to ask you this further question; I want to base that upon a hypothetical question as to whether if you were placed in their position; want to ask you if you had been deprived by judgments of courts of competent jurisdiction of property of the value of from fifteen to twenty million dollars—the validity of that legislation had been affirmed by the Supreme Court of the United States—and your adversary in the courts had taken possession of the property in the way that these "court claimants" had entered upon the land, whether or not you yourself would not gladly have given to our firm the contract for 9 per cent, a contingent contract to recover that property for you?—A. Yes, sir; on the idea that I had everything to gain and nothing to lose. I would have considered myself fortunate indeed to have a contract for even a larger amount to recover something that I had lost and never expected to recover again.

Q. Are you fairly familiar of the value that is placed upon an allotment right; that is, the right to share in the distribution of the lands and the distribution of the tribal funds?—A. That is a matter of judgment to a great extent, but I know about business men and about citizens and about people and know about how such a right is regarded.

Q. What is that right regarded worth?—A. Five or six thousand dollars.

Cross-examination by Mr. J. G. RALLS:

Q. Have you bought the surplus land of an intermarried citizen?—A. No, sir.

Q. Have you seen it sold, one-half of his allotment?—A. I represented some parties in Oklahoma City who wanted some surplus and offered a large percentage.

Q. Do you know of any having been bought and sold here since the restrictions have been removed?—A. Not of my personal knowledge.

Q. Will ask you if it has not been bought and sold from $520 to $1,500?—A. Not within my knowledge, and I think that I should consider that if such a contract had been made an advantage had been taken of some ignorant Indian or white man or woman.

Q. Do you know the market value of a surplus?—A. The worth of anything is just what it will bring, but the surplus of one Indian might be worth a good deal more than another. It depends largely upon the buyer.

Q. There is a market value here in Tishomingo for the surplus lands?—A. I do not live here and could not say.

Q. You do not know what the market value is?—A. I suppose that anything here could be sold, but under the peculiar conditions here I would state that the law is so recent and the conditions so peculiar, so little surplus land on the market, much of it still subject to contest, I would state that that period had not arrived when there can be a settled price of lands in this country.

Q. Isn't it a fact that land has been filed upon by intermarried citizens and that the time has expired for contest?—A. Yes, sir.

Q. Isn't it a fact that deeds have been prepared by the representatives of the Government and are now in the hands of the governors of the nations for such tracts of land?—A. I could not state from my own knowledge, but I understand

a great many patents are in the hands of the governors, but that they have to be recorded.

Q. Is that your understanding as a lawyer?—A. My understanding is the basis of every title is it emanates by the transfer of the sovereignty or sale of the interest of the State to the individual, and that it is proper for it to be recorded. I believe the Federal Congress has provided that these patents shall be recorded.

Q. You don't know the market value of the surplus lands?—A. No, sir.

Q. Tell the court how you happen to be here as a witness?—A. Yes, sir.

Q. How?—A. On last Saturday afternoon I was in the district court room at Pauls Valley listening to the court overrule a motion for a new trial which I had prepared, to which I took exceptions, and a boy handed me a telegram—it is in my overcoat pocket at the hotel—and the telegram said: "Meet me at Tishomingo in the morning at my expense. There is an early local from Ardmore. J. F. McMurray," and I came on that.

Q. When you got here you ascertained that he had sent for you as a witness?—A. Yes, sir; said it was very important.

Q. You have been practicing law ten years?—A. No, sir; seventeen years.

Q. In the Indian Territory?—A. Ten years in the Indian Territory.

Q. Are you acquainted with lawyers here?—A. Yes, sir; when this Indian country was opened there was quite an exodus of lawyers over here and especially into the Chickasaw Nation. I knew most of them in Gainesville.

Q. You have a pretty good idea what a reasonable salary for an attorney would be per annum?—A. That is rather an odd question. I know very few lawyers that work for salaries.

Q. Know any working for railroads?—A. Judge Stuart and Cliff Jackson; know a great many lawyers that work in a different way. Know a good many lawyers who refuse railroad attorneyships, for the reason that they can make more money suing them.

Q. What would be a reasonable salary per annum for an attorney in the Indian Territory?—A. That would depend upon the lawyer.

Mr. MANSFIELD. I am willing for Mr. Ralls to inquire about any matter that is proper, but I must say to the court that I do not see that what the earnings of a lawyer generally is, or the salary at which a man might work for a railroad company, would bear upon what a man would be entitled to under a contingent contract.

Mr. J. G. RALLS. That is not a contingent contract with these attorneys who are asking for this fee. A fixed salary was paid. They were getting $10,000 a year and expenses from the parties by whom they were employed here. They are getting a fixed salary per annum.

Judge ADAMS. The question is what the services of these gentlemen in these particular cases are reasonably worth. To get at that it seems to me it would be competent what other lawyers got for similar services. You can go ahead and examine him and you gentlemen can cross-examine him on that question.

The WITNESS. Fee is rarely fixed among lawyers; depends upon the thing to be done. We understand and we all know that this is litigation involving a greater amount than any litigation which has been tried in the Southern States or this country. As I mentioned, this fact should be considered—the question of certainty or uncertainty. Many contracts are made every day, many in north Texas, where damages are collected against railroad companies; very commonly contracts where they get half.

By Mr. J. G. RALLS:

Q. You have not answered my question. I was wanting to know what a reasonable salary for a good lawyer in the Indian Territory would be per annum, devoting all his time to a certain kind of work.—A. I don't know that I can answer that question.

Q. Will ask you if $5,000 a year, with his expenses paid, would be a fair salary for him?—A. The average lawyer in the Indian Territory or in most any country where they are engaged in specialties—the average lawyer in the country practice would be glad to get $5,000 a year and expenses.

Q. Would ask you if that would be a high average in the earnings in the Indian Territory?—A. I should say that it would be. The difference between lawyers is immense. The average lawyer does not compare with lawyers who are at the head of their profession. Even in the cities there are a few firms that control all the business. There are three or four firms, and the good business goes to them and the balance of the lawyers get the refuse.

Q. That is true of your town?—A. Yes, sir; I suppose it is.

Q. True of about every town in the Territory?—A. True almost universally.

Q. Will ask you if it isn't a fact that Judge Stuart is a leading lawyer of the Indian Territory?—A. Yes, sir.

Q. Lives at South McAlester?—A. Yes, sir.

Q. Judge Potter is one of the lawyers of the Indian Territory at Ardmore?—A. Lives at Gainesville; has an office in Ardmore.

Q. Leading lawyer?—A. Fine lawyer.

Q. I don't know any attorneys at Pauls Valley. Who do you consider the leading lawyer there, omitting yourself?—A. Omitting myself, we have several good lawyers there; J. T. Blanton, Albert Rennie, and J. B. Thompson. Mr. Pruitt is exclusively in the criminal business.

Q. Do you know any lawyers here not engaged in citizenship business?—A. I don't know.

Q. Is Nick Wolf?—A. I don't know. My business had been almost wholly along other lines.

Q. I don't know whether you meant to answer the question just as you did or not, but I understood you to say that on account of this litigation that the attorneys who represented the court citizens had a feeling against the attorneys for the nation?—A. They had some feeling.

Q. Do I understand you to say that they had any feeling against the attorneys for the nations?—A. I expect that they have. I give it as a matter of judgment. I know that they had an immense amount of money tied up in litigation on contingent fees. I testify from my understanding. Nearly all of these cases for the "court claimants"—I suppose noncitizen would be a pretty good synonym—nearly all the cases were taken on contingent fees. The men didn't have much money and they got into possession of a quantity of land and have been for years, and these lawyers had large sums of money tied up in that litigation, and if they had won they would have received large sums of money, and it is natural that they have some feeling.

Q. That is why you made the statement?—A. No, sir.

Q. That is your reason for making the statement?—A. No, sir; that is the reason why these men have that feeling. I made that statement because it is the general understanding that they have that feeling.

Q. Do you know of any attorney that has any feeling against Mansfield, McMurray & Cornish on account of the litigation?—A. I think I can name a number that have.

Q. Who are they?—A. I don't state that as my own knowledge, but I am not afraid to state who they are.

Q. Tell us what you know?—A. Couldn't give you the names of many whom I know absolutely have feeling against them.

Q. Isn't it your experience that lawyers, while they fight each other in a lawsuit—that after the lawsuit they are good friends?—A. Yes, sir; lawyers are jolly good fellows.

Q. You don't get mad with a man if he beats you?—A. No, sir.

Q. It would not have anything to do with the fixing of the fee that was to be paid, as to the fee that your antagonist should be allowed out of his own client's pocket?—A. I think if I had been beaten and I had lost a good deal of money that I was going to make out of it that I would not want them to get anything out of it.

Q. Would you not rather like to see him have it than to have the client go off with it?—A. No, sir.

Q. Isn't it a fact that in hard-fought litigation that you would rather see the attorney that represents the party that beats you have the proceeds of the suit than for the client to have it?—A. No, sir.

Q. As a personal matter, you want to have him lose?—A. I would want to see the lawyer get it and the client get what he wanted.

Q. You would rather see the lawyer get it?—A. Like to.

By Mr. MANSFIELD:

Q. This is not an ordinary state?—A. Will state that this case is not paralleled in the history of litigation anywhere.

Q. Why?—A. It is a case where, after the parties had given up all hope almost of defeating these judgments and "court claimants," whom they considered, and with reason, were fraudulently on the rolls, and after they had consulted with different lawyers, who advised them that they could do nothing; after it was the general statement of the bar that they could do nothing, it is a case where they made a contract with lawyers against them and business

people against them, and, in some way having worked out a scheme of attack, got through Congress a bill reopening the questions that had been considered absolutely settled and giving another trial to these cases, and the final result of it was that a great many who were citizens by the judgment of the court were in possession of the lands and entitled to distribution in the estate were defeated and deprived of it; and whatever the value of it was was saved to the Indian nation after they had certainly, I think, no hope of getting it. It is an extraordinary case.

Q. You speak of the sentiment of the bar; you speak from a knowledge gained by you as a member of the bar, associated with the lawyers and the general knowledge that you gained from mingling in the community?—A. Yes, sir.

Q. The question I asked you, is not the feeling that might arise between the members of the bar and ourselves different from an ordinary case?—A. Yes, sir.

Q. Is it not true that there is a very considerable prejudice not only among the noncitizens and the court citizens, but among the bar generally, to any steps that may be taken by the tribes or with the sanction of the Interior Department and which they were interested in?—A. That is my understanding.

Q. That prejudice is very bitter?—A. I think it is.

Q. What you mean to say is that that has extended to the members of our firm; that the general course between lawyers would not prevail?—A. I think that is practically true.

Q. Mr. Weaver, I am only interested because I desire to establish that the rate fixed in this contract was a reasonable one; have you any knowledge of what the lawyers on the other side would have received if they had got these people on the rolls?—A. Rather think some of them told me that they were to get half; think nearly all these contracts were for half.

Mr. J. G. RALLS. I submit that the witness's evidence is not competent; that he is not competent to testify as to it; he has an impression there.

By Mr. MANSFIELD:

Q. Were public meetings called in the Chickasaw Nation by the bar for the purpose of convassing ways and means, raising money to help these people?—A. Held meeting and taken organized action.

Q. They have taken organized action?—A. Yes, sir.

By Judge WEAVER:

Q. You are no relation whatever to me, are you?—A. No, sir. Not related to any Indian or any of the attorneys, not to the court or any member of the court.

Witness excused.

Judge ADAMS. I will state for your benefit, Mr. Ralls—you are a lawyer of considerable experience and also an intermarried citizen, and, as you say, interested in these matters—I want to state to you just what has taken place with reference to this matter that is now before the court. The court being very desirous to complete this work here—that is, hoped to get through last Saturday with the cases—it developed that there was one case in which the court had given the attorneys for the applicants until to-day in which to file brief; hence we could not complete our labors on last Saturday. We then adjourned the court until to-day. Of course these gentlemen could not present their petition until all the cases were disposed of under the act authorizing this court to pass upon the compensation of the attorneys. It was then announced that the court would meet here to-day for the purpose of rendering the decision in the last case on the docket and taking up this matter—the question of the fee of these attorneys. Before you came in Messrs. Mansfield and Cornish had been examined. I do not know whether the gentlemen desire to introduce any further testimony or not. If they do, I state to you on behalf of the court that, being an interested party and being a lawyer who has had possibly more of these citizenship cases than any other attorney who appeared upon the docket of this court, you ought to be competent to conduct the examination on the other side, and the court would be glad to have you participate and furnish any testimony that you may desire. Congress passed the act saying that we should fix reasonable compensation to these gentlemen, and while I much regret that fact—I wish it had remained where it was—we propose to fix it, and fix it, in our opinion, right, and want all the light on the subject that can be given from any proper source; and as far as the other gentlemen's testimony is concerned, I will have the stenographer furnish you with a copy, and they will be placed back on the stand, if you desire, for cross-examination by you.

Mr. J. G. RALLS. I gave way to my feelings as a lawyer. I would naturally want the attorneys to get all that the court would allow them, not regarding the fact that Mr. Weaver thinks lawyers get mad at each other. I have never seen a lawyer stand in the way of another getting a fee. It would not be my duty to go out and get witnesses at my own expense. If the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation did not see fit to do that, I am not called upon as a citizen to do it.

Judge ADAMS. I considered that you were interested to that extent: you stated that if the Choctaws and Chickasaws knew that this proceeding was going on here and that their governors had written here indorsing such a contract that they would be here.

Mr. J. G. RALLS. I did not say that they would be here; I said that there would be an uprising.

Judge ADAMS. But one thing for them to do is to come here. We are anxious to hear them.

Mr. J. G. RALLS. That statement was made in answer to their having agreed to the fee. So far as I am personally concerned, I think that I have done all that I could be expected to come here and do. I had a motion I desired to file, and when the court made the statement it did—but whatever fee is allowed these gentlemen will make very little difference to me and my family, and what it would cost me to bring witnesses here would be more than it would be worth, and I have done all that I can be expected to do as a citizen. If this is all the evidence, I would state this: If I had been here I would have demurred to the petition, and if permissible will do so, for the reason that the act of Congress is null and void. Congress has no right, without the authority of the nations, to borrow the money of the nations. The nations are not bound by that act. That was the moneys of the nation, and they had no right to do it. That was not in the supplementary agreement. What they rely on is the Indian appropriation bill, and I think the gentlemen, having drawn their salary and expense money, are not entitled to anything more, and that if so they would have to get the consent of the nation. The acts of council were not submitted to the nation. That was not done. The contract they have here is based upon those acts that are not in force. The governors of the nations had no authority to make those contracts, because the acts under which they attempted to do so were void, and when they acted they acted as individuals, and they are not bound, and for Congress to say that although you get a salary of $10,000 we are going to enter into another agreement, whereby your clients are to pay more than the contract price. It is usual for me to take what my clients give me and not to go to third parties, and that is why I say this act is null and void, and if the Treasurer of the United States pays out money, then there will be a proposition to make the United States pay it again. These things always turn around. I think I have gone as far as I ought to go, and perhaps further, and so far as I am concerned the matter is with the court.

Judge ADAMS. If you desire to raise that question as to whether Congress had the power to pass that act, the court will hear you. Any testimony that you have got we would be glad for you to furnish it. Have you gentlemen anything else?

Mr. MANSFIELD. We are not prepared right now to take any further testimony, and I don't know without a consultation with my counsel. There are one or two parties that reside out of the Choctaw Nation that we desire to offer to the court, and if so we are going to file a motion, and ask the court—as has been done in citizenship cases—and ask the court to go and take the testimony on account of the distance and inconvenience. I think it would not be fair to take gentlemen on the other side to pass upon this question, and therefore I interviewed prominent lawyers who were not connected with these matters, and it is probable we will take their testimony at an early date.

Mr. J. G. RALLS. What is the amount that is asked?

Mr. MANSFIELD. Nine per cent.

Mr. J. G. RALLS. What does that figure up?

Mr. MANSFIELD. I have not figured it up. I said that it would be necessary for me to prepare an exhibit to my testimony, the data upon which we ask the fee. I can fairly approximate them. Probably in excess of 3,000 persons.

Mr. J. G. RALLS. The fee you are asking amounts to something over a million dollars.

Mr. MANSFIELD. I have not prepared a formal motion, but it was our intention to ask the court to take the testimony of possibly one or two gentlemen at South McAlester day after to-morrow, and it was really the intention to ask the

court to take it to-morrow, but I don't believe we can get there and take the testimony to-morrow. If the court is willing to fix a time and take the testimony there without a formal application in writing, we would like to have it done.

Judge ADAMS. We will take it day after to-morrow, at South McAlester.

Mr. MANSFIELD. I will try to get all of the witnesses there. I want to procure the testimony of the chief justice of the Arkansas supreme court, Mr. Hill, who had lived at Fort Smith and knows the conditions over here, but the supreme court is in session, and I don't know that I can procure his attendance there. I saw him about the matter and he said the supreme court was very much behind with its work, and that if he gave testimony it would have to be at Little Rock, and I will ascertain if he can take his testimony at South McAlester.

KINTA, IND. T., *November 9, 1904.*

To the honorables SPENCER B. ADAMS, WALTER L. WEAVER, and HENRY S. FOOTE, judges of the Choctaw and Chickasaw citizenship court,

Tishimingo, Ind. T.

SIRS: I take the liberty of addressing you, as principal chief of the Choctaw Nation, relative to action by the court under that portion of the act of Congress approved March 3, 1903, in fixing the fee of the attorneys representing the Choctaw and Chickasaw nations in the trial of "court claimant" citizenship cases.

In view of the interest of the Choctaw Nation in the matter and of my official position as the chief executive of the Choctaw Nation, I deem it not improper to lay before the court such information as I have for its consideration in connection with the matter referred to.

From my first discovery of the terrible wrongs that have been done the Choctaw and Chickasaw nations by the admission of thousands of "court claimants" under the act of June 10, 1896, the entire power of my administrations then and since have been exerted in securing relief for our people. I was principal chief at the time and up to the fall of 1900, and could serve no longer at that time for the reason that our constitution prohibits continuous service on the part of the chief executive longer than two terms. I was succeeded by Gilbert W. Dukes, and in 1902 I was reelected, and again in 1904, and will serve, barring death, to the end of our tribal existence.

As above stated, the extent of the wrongs done our people by the admission of fraudulent citizenship claimants by the United States court became apparent in 1898. Since these admissions to citizenship had been made by the United States courts and their judgments became final our people felt that there was absolutely no hope of securing relief. I took the advice of many whom I considered competent to advise me upon legal matters and was assured by them that the judgments of the United States courts were final, and that there was no power anywhere vested to disturb them, and that there was nothing for our people to do but to witness the wrongful taking of millions of dollars in value of their tribal property by adventurers from Arkansas, Texas, and the surrounding States. So thoroughly convinced was I that wrongs such as these should not and could not be permitted to stand that I persevered in my efforts.

Mansfield, McMurray & Cornish, a firm of attorneys at South McAlester, Ind. T., had been employed by me in some other matters affecting the rights and interests of the nation, and I conferred with them relative to the defeat of the "court claimants."

They took the matter under advisement, made a thorough investigation into the facts, and advised me as a result of such investigation that the admission of "court claimants" not only involved the perpetration of frauds and wrongs and the practice of perjury and wrongdoing such as has never been known perhaps in the history of judicial proceedings in this or any other country, but in addition to that they advised me, as a result of their investigations that, according to their view, the judgments rendered by the United States courts were absolutely void, for the reason that they were rendered against only one of the nations, whereas both the Choctaw and Chickasaw nations were necessary and interested parties, and furthermore that the United States courts had tried the cases de novo upon appeal from the Commission to the Five Civilized Tribes, whereas under the act of June 10, 1896, under which they had been rendered, the action of the United States courts should have been confined to a review of the action of the Commission to the Five Civilized Tribes.

This was the first substantial basis for relief that had been suggested, and I directed this firm of attorneys to proceed with their investigations and that

the matter would be presented to our people and to the council, and if council so directed by an act I would employ them to defeat the "court claimants" and give them a contingent contract, agreeing to pay a proportion of the value of the allotments saved in the event of success.

As above stated, my term of office as principal chief expired in the fall of 1900, and up to that time the matter had not progressed far enough to be presented to council. Gilbert W. Dukes was my successor, and in January, 1901, a special session of council was called for the purpose of taking steps looking to the defeat of the "court claimants." I was elected president of the senate, and on March 7, 1901, an act was passed and approved authorizing and directing the principal chief of the Choctaw Nation to enter into a contract for the purposes stated.

Hon. Douglas H. Johnston was, and had been for more than two years, the governor of the Chickasaw Nation, and a like act had been passed by the legislature of the Chickasaw Nation authorizing the same employment and for the same purpose.

On January 17, 1901, Gilbert W. Dukes, principal chief of the Choctaw Nation, entered into a contract with Mansfield, McMurray & Cornish, a copy of which will be filed with the court, and which provides that they shall be paid, in the event of success, 9 per cent of the value of the allotment of "court claimants" which they may have saved to the tribes.

The whole matter of the difficulties which confronted the Choctaw people, the terrible obstacles which had to be overcome, and the improbability of success in the end, by reason of the powerful influences which would certainly be exercised against our efforts, were thoroughly understood by the Choctaw people prior to the assembling of the general council and by the general council as the representatives of the Choctaw people at the time of the passage of the act of Congress authorizing the employment.

Not only this, but in the campaigns which have followed this contract and its terms and the relation of Mansfield, McMurray & Cornish to the Choctaw Nation in protecting its interests from "court claimants" have been made the subject of political discussion throughout the nation. As a substantial evidence of the fact that this contract and the right of Mansfield, McMurray & Cornish to the compensation which they have earned under it is not only thoroughly understood by the Choctaw people and approved by them, I have only to refer to the outcome of the elections at which I was elected principal chief in 1902 and again in 1904.

The Choctaw Nation and people not only consider this contract a binding one, but think there rests upon them the deepest obligation to urge, so far as may be in their power, that it be observed in all respects. Too much can not be said relative to the unswerving loyalty and devotion of Mansfield, McMurray & Cornish to the interests of the Choctaw Nation. They have stood alone in their fight against "court claimants" and for our protection, and the most powerful and far-reaching influences have been exerted toward breaking them down in the work they have undertaken. They have declined all other business and devoted themselves constantly and exclusively to the consummation of this great work which we have placed in their charge, and the Choctaw Nation and people feel that if there ever existed a legal and binding obligation and one that should be observed in all respects it is the contract which they have entered into with these attorneys, guaranteeing that they shall be paid a reasonable compensation for their services and to a reasonable portion of the property saved as a result of their efforts.

It would be impossible for me to lay before the court information in addition to what it already had as to the services rendered by these attorneys in the actual trial of the cases. The thorough and systematic manner in which the cases have been prepared for trial, the steps which have been taken by them to develop the truth or falsity of each claim, involving investigations extending throughout practically every State south of Mason and Dixon's line, and the earnest and able manner in which they have presented each case is sufficient, I feel warranted in saying, to challenge the admiration of all who are familiar with the facts and who feel interested in the triumphs of right and the rebuke of wrongdoing; but their services to the Choctaws and Chickasaws have extended further and beyond this. The actual trial of the cases is not the greatest service performed by these attorneys. From 1899 to 1902 they have labored constantly, earnestly, and with a persistence rarely equaled, before the Department of the Interior and the Congress of the United States, seeking to secure the creation of a tribunal vested with jurisdiction to try the cases. The first

supplementary agreement was made in 1899, but it failed of ratification. The next was made in the early part of 1900. It also failed, and still another was made in 1901. In all of these preliminary agreements clauses were inserted looking to the retrial of "court claimant" citizenship cases, and these attorneys were the representatives of the tribes in the making of all of them. The final supplementary agreement was ratified by Congress on July 1, 1902, and by the Choctaws and Chickasaws on September 25, 1902, and was negotiated in the early spring and winter of 1902. There was not a single detail of any of these agreements which was not considered and passed upon by these attorneys as our representatives; and the agreements would never have been considered by the tribes but in the hope that there might be inserted in them provisions for the retrial of "court claimant" cases.

To the defeat of the "court claimants" the best efforts of all my administrations have been directed, and it is with much pride that I am now permitted to witness the consummation of the efforts beginning more than five years ago. To the efforts of Mansfield, McMurray & Cornish are due the protection of the Choctaw and Chickasaw nations from the claims of "court claimants." But for the efforts which they have made, extending throughout a period beginning in the year 1890 and continuing to this time, the "court claimants" would have been placed upon the final rolls and received lands of the Choctaws and Chickasaws of the approximate value of $20,000,000. I have not the exact figures before me, but the records of the court will show the number of citizenship claims involved. I understand the number to exceed 4,000, and it is a matter well within the knowledge of those of us most vitally interested that the right of citizenship in the Choctaw and Chickasaw nations, including the lands which are included in allotment and the interest in the invested funds and other moneys, town-site funds, and the proceeds of the sale of surplus and coal and asphalt lands, is of the value of from $5,000 to $6,000.

In conclusion, I have to state that the rate of compensation fixed in the said contract with Mansfield, McMurray & Cornish is a reasonable one and that it is the wish of the Choctaw people that it be carried out.

I therefore have to respectfully request that the court, in fixing the fee of our attorneys under the said act of March 3, 1903, consider the suggestions herein contained and to fix such compensation in accordance with the rate contained in said contract.

Very respectfully,

GREEN MCCURTAIN,
Principal Chief Choctaw Nation.

EMET, IND. T., *December 3, 1904.*

To the Choctaw and Chickasaw Citizenship Court.

SIRS: As governor of the Chickasaw Nation I wish to state the facts and circumstances attending the execution, by the Chickasaw and Choctaw nations, of the contract with Messrs. Mansfield, McMurray & Cornish for the defeat of "court claimants," entered into on January 17, 1901; and my knowledge of the service rendered by these attorneys, under said contract, for the information of the court in the exercise of the duties imposed upon it in fixing their compensation for such services under the Indian appropriation act of March 3, 1903.

I presume a copy of said contract will be filed with the court, and deem it unnecessary to refer in detail to its various provisions, the purpose of this communication being to respectfully urge upon the court that the Chickasaw people consider this contract not only a binding one from a legal standpoint, but that they consider that the moral obligations resting upon them to that end are of the deepest and most sacred character.

Under the act of Congress, approved June 10, 1896, several thousand adventurers from Texas, Arkansas, and various other States made application to the Commission to the Five Civilized Tribes for citizenship in the Chickasaw and Choctaw nations. Their claims were passed upon adversely by the Commission in most instances, and the cases were then appealed to the United States courts for the central and southern districts of the Indian Territory under the act. By the use of false affidavits, perjured evidence, and the practice of fraud these applicants were in most instances admitted, these proceedings being consummated in 1897 and 1898.

The tribes urged upon Congress that provision for relief from these admissions should be made, and in 1898 an act was passed providing for an appeal to the Supreme Court of the United States; but such appeal was limited to the constitutionality and validity of the original legislation. Attorneys were employed and the cases were appealed to the Supreme Court of the United

States, but its holding was against the tribes and in favor of the constitutionality and validity of the original legislation, and thus affirming the judgments and cutting off the tribes forever, as was then thought, from any hope of relief. These "court claimants," thousands in number, at once scattered themselves over the public domain of the Chickasaw and Choctaw nations, took possession of tribal lands, and otherwise began the exercise of all the rights and privileges of citizens of the Chickasaw and Choctaw nations, so far as tribal property was concerned.

Thus the matter stood when I became governor of the Chickasaw Nation in the fall of 1898. I had observed the progress of the "court claimant" citizenship cases from 1896 to 1898, and was convinced that the Government of the United States had become a party, unwittingly perhaps, to the perpetration of wrongs against the Chickasaws and Choctaws, by the admission of these fraudulent applicants, never before equaled perhaps in the history of the relations of the United States Government with its wards. I conferred with various distinguished attorneys throughout the country and at Washington in the hope that some plan or procedure might be suggested whereby the tribes could be relieved from these citizenship claimants, but all with whom I conferred assured me that the decisions of the courts were final and that nothing could be done.

Early in 1899 I became acquainted with the firm of Mansfield, McMurray & Cornish, of South McAlester, Ind. T., and being impressed with their ability and their devotion to matters of business intrusted to them, I employed them to represent the Chickasaw Nation in some matters affecting its interests then pending before the Commission to the Five Civilized Tribes and the Department. As our relations progressed, I conferred with them relative to the "court claimants" and directed them to consider the situation fully and advise me if, in their judgment, anything could be done to afford the tribes relief, assuring them that, so far as the Chickasaw Nation was concerned, if any plans could be devised for the defeat of these claimants and the protection of the tribes therefrom ample provision could and would be made for their compensation.

They took the matter under advisement throughout the summer of 1899, and in the fall of that year reported to me as a result of their investigations as follows: That in the first place the perpetration of frauds and wrongs in the trial of such cases was most appalling, and in the second place the judgments of the United States courts admitting the "court claimants" were void, for the reason that the property sought to be affected hereby belonged jointly to the two tribes, whereas only one had been served and made a party. They advised me further that in their judgments these conditions, both as to the fraud practiced in the trial of such cases and the invalidity of such judgments, could be so thoroughly impressed upon the Department of the Interior and the Congress of the United States that provision could and would be made for the retrial of such cases.

This was the first substantial suggestion which I had ever received that the tribes might be relieved from these claimants, and I directed these gentlemen to proceed, which they accordingly did.

Their first effort was to go before the Commission to the Five Civilized Tribes in November, 1899, and urge that the Commission and the Secretary of the Interior disregard such judgments by reason of their invalidity and decline to enroll the applicants named therein. After thus presenting the matter to the Commission it was transmitted to the Secretary of the Interior and there presented in January, 1900.

We, of course, realized from the first that the only effective means whereby relief might be afforded was through legislation providing for the retrial of the cases, and to this end our efforts were constantly directed. It was early in 1900 that the Department of the Interior realized that the Atoka agreement, which was ratified in 1898, was inadequate for the closing of the affairs of the Chickasaws and Choctaws; and the tribes were urged to enter into a new and supplementary agreement. We impressed upon the representatives of the Government of the United States that no supplementary agreement could or would be ratified unless it contained a provision for the retrial of the "court claimant" citizenship cases.

A supplementary agreement was entered into in May, 1900. This failed of ratification, and another one was entered into early in 1901. This also failed of ratification, and in March, 1902, the supplementary agreement was entered into which was ratified by Congress on July 1, 1902, and by the Chickasaws and Choctaws on September 25, 1902, providing, among other things, for the retrial of "court claimant" citizenship cases and the creation

of the Choctaw and Chickasaw citizenship court therefor. During all these years, from 1899 to the present time, these attorneys, Messrs. Mansfield, McMurray & Cornish, have represented the Chickasaw and Choctaw nations in all matters relative to securing a provision for the retrial of "court claimant" citizenship cases; and the services which they have rendered are of more value to the tribes, if a distinction may be made, in securing provisions of law for the retrial of such cases than their actual trial after such provision had been made.

It would be impossible to adequately and properly describe the devotion of these attorneys to the Chickasaw and Choctaw nations and people during the progress of this great work, and the terrible and seemingly insurmountable obstacles which they have overcome from time to time as it has been carried forward. Every influence which could be exerted was against them. Practically every attorney in the Chickasaw and Choctaw nations was interested in "court claimant" citizenship cases. The "court claimants" themselves were scattered throughout the two nations, and by reason of their numbers their interests were allied with practically every business interest in every community in the two nations. With a courage rarely equaled, and with that degree of energy and enthusiasm which only those knowing themselves in the right can command, they pushed their investigations everywhere, uncovering fraud, perjury, and wrongdoing in practically every case, and in furnishing information thereof to the representatives of the Government of the United States, both in the Department of the Interior and Congress; and I have no hesitancy in saying that the legislation contained in the act of July 1, 1902, providing for the retrial of "court claimant" citizenship cases and the creation of the Choctaw and Chickasaw citizenship court therefor is directly the result of the efforts of our attorneys, Messrs. Mansfield, McMurray & Cornish, from 1899 to 1902, in furnishing it such information as convinced it that an obligation, impossible to avoid, rested upon it to provide the tribes a fair and speedy means of securing relief from the wrongs which had been done them.

With the institution of the "test suit" and the institution and disposition of the various "court-claimant" citizenship cases, aggregating more than two hundred and fifty and involving the citizenship claims of from three to four thousand persons, the court is more familiar than I. I can say, and do know, that the magnificent efforts of our attorneys put forth prior to the passage of the legislation have been redoubled in connection with the trial of the cases. The record of the court will show what has been accomplished and the manner in which it has been done.

I now refer briefly to the contract which the Chickasaws and Choctaws entered into with Messrs. Mansfield, McMurray & Cornish, providing for their compensation. For nearly two years the efforts of these gentlemen were made upon my general assurance and that of Hon. Green McCurtain, who was principal chief of the Choctaw Nation, that if it appeared that there was reasonable probability of success that we would call together the legislative bodies of the two tribes and provide for entering into a contingent contract, agreeing to pay them a fair proportion of what they saved the nations.

By the early part of 1901 such progress had been made in awakening the representatives of the Government of the United States to a realization of the wrongs that had been done us that it seemed reasonably probable that some provision would be made for retrying the "court-claimant" cases, and accordingly our legislative bodies were called together for the purpose of considering the matter of taking such steps as would make adequate provision therefor. The general council of the Choctaw Nation passed an act, which was approved on January 7, 1901, and the legislature of the Chickasaw Nation, which was approved on January 10, 1901, authorizing and directing the chief executives of the two nations to enter into a contract for the defeat of the "court claimants" and providing that the compensation to be paid thereunder should be a per centum of the value of the tribal property saved, and that no compensation should be paid except in the event of success. On January 17, 1901, Gilbert W. Dukes, principal chief of the Choctaw Nation, and I, as governor of the Chickasaw Nation, entered into a contract with Messrs. Mansfield, McMurray & Cornish, by authority of the acts of the general council and legislature referred to, providing that they should be paid 9 per cent of the value of the allotments saved by the defeat of "court claimants," and that such compensation should be contingent upon their success. This contract is, as above stated, before the court, and I shall not in this connection refer further to its provisions.

Of all contracts which have ever been made with attorneys in connection with the business of the Chickasaws and Choctaws, I consider this contract the most

reasonable one and that the services rendered under it have been of most value to the tribes. Its provisions were thoroughly understood at the time it was entered into and the necessity for making provision for the accomplishment of the work which these gentlemen have performed was made at the instance of the leading men of the two nations. There are now and have always been in the two nations factional differences, and the action taken by the administration and the legislative bodies have been criticised somewhat by the opposing factions; but as conclusive of the fact that the acts of the duly constituted tribal authorities in entering into this contract have the approval of our people, we have only to refer to the fact that the administrations by which the work was originally undertaken have been throughout the whole time continued in power from time to time by the votes of our people at the polls.

An examination of the contract will show that it was agreed between the parties therein that the vaule of an allotment, for the purpose of arriving at the compensation due, should be considered as of the value of $4,800. While this sum is an estimate, I am firm in the belief that the value of the right of citizenship is equal to this amount or more. Each allottee is to receive land equal in value to 320 acres of average land. After these allotments are made there will be a vast area of several millions of acres of unallotted lands or surplus lands, which will be either reallotted or sold and the proceeds divided. In addition to this the vast coal and asphaltum fields on the Choctaw and Chickasaw nations are to be sold and the proceeds divided among the allottees. Besides this, each allottee has his interest in the town-site funds, the invested moneys of the tribes in the hands of the United States Government, besides other items of private property.

It may be thought that the aggregate compensation to which Messrs. Mansfield, McMurray & Cornish are entitled under the contract is considerable, but the vast amount of tribal property involved and saved to the tribes and actually returned to our bona fide citizens must be taken into consideration.

It must also be considered that these attorneys have devoted themselves exclusively throughout the past years to the conduct of the business of the Chickasaws and Choctaws, not only refusing other business, but by their advocacy of our interests rendering themselves unpopular in the minds of the interests opposed to us to the extent of shutting in a very large measure the avenues of business open to others.

At the time the work was undertaken there existed absolutely no hope in the minds of our people for regaining this tribal property. As a result of the efforts of these attorneys, extending over a period of four years, it is restored to them; and they are not only grateful for what has been done, but are willing and anxious that reasonable compensation be made for the services rendered.

In view of these facts I have to respectfully urge on behalf of the Chickasaw Nation that in the exercise of the duties required of you in fixing the compensation of the attorneys representing the Chickasaw and Choctaw nations in the trial of "court-claimant" citizenship cases, that you take into consideration the rate of compensation fixed by the tribes themselves through their duly constituted authorities, and that you hold that such rate of compensation is a reasonable one and should be paid.

Very respectfully.

D. H. JOHNSTON,
Governor Chickasaw Nation.

In the Choctaw and Chickasaw citizenship court, sitting at South McAlester, Ind. T.

Testimony taken at South McAlester, Ind. T., in the city hall, December 7, 1904, in the matter of fixing "a reasonable compensation" for the attorneys of the Choctaw and Chickasaw nations in connection with citizenship cases, being a continuation of the hearing begun at Tishomingo, Ind. T., on December 5, 1904. Present: The honorables Spencer B. Adams, chief judge, and Walter L. Weaver and Henry S. Foote, associate judges, Choctaw and Chickasaw citizenship court.

J. H. SHEPHERD, a witness for petitioners, Mansfield, McMurray & Cornish, attorneys for Choctaw and Chickasaw nations, after being duly sworn, testified as follows:

By Mr. MANSFIELD:

Q. Judge, give your name to the court.—A. J. H. Shepherd.
Q. What is your age?—A. Fifty-five years.
Q. Where do you live?—A. South McAlester.

Q. Indian Territory?—A. Indian Territory.

Q. What is your profession?—A. I am an attorney at law.

Q. How long have you been engaged in the practice of your profession?—A. Thirty years.

Q. Where have you been engaged in the practice of your profession?—A. In the city of Shreveport, La., until my removal to South McAlester.

Q. You are now engaged in the practice in the Indian Territory—A. Yes, sir.

Q. You are fairly familiar with conditions in the Indian Territory?—A. Yes, sir; I spent a considerable portion of this summer in investigating conditions.

Q. Are you familiar in a general way with the history of the creation of this court and the history of what is known as citizenship cases?—A. Yes, sir; while I have only been in practice here this present year and have had no cases before the court, I have observed matters before the court in this connection. In fact, I may say I came to the Territory some two years ago as an attorney for some persons who desired enrollment before the Dawes Commission at Atoka. I made some study then of the treaties and of the rights of the Choctaws and Chickasaws in particular.

Q. You are familiar in a general way in which these people hold land in the Choctaw and Chickasaw nations and the character of the property which they hold?—A. Yes, sir.

Q. Judge Shepherd, I desire to submit a hypothetical question to you to which I desire an answer. Assuming that under legislation of Congress there were rendered against these tribes during the years 1897 and 1898 judgments which entitled the persons named in the judgments to participate in the allotment of lands of the tribes; judgments admitting, we will say, exceeding 3,000 persons to citizenship in the nations; that those judgments were final judgments by the provision of law under which they were taken at that time, which gave the courts of the Indian Territory jurisdiction and authorized them to render judgments; those judgments had been rendered during the years 1897 and 1898 and had become final; that under special legislation an appeal had been granted to test the constitutionality of the law under which these judgments had been rendered, and that cases had been taken to the Supreme Court and the constitutionality of the law under which these judgments had been rendered had been upheld by the Supreme Court, and those judgments had thus become final; and that persons acting under authority of those judgments had taken possession of lands and some of them of the most valuable lands of the nations, what would you consider a reasonable fee for a firm of attorneys to undertake with the tribes that they would, pursuing whatever means necessary, upon a contingent fee, secure the setting aside of those judgments and defeat the claim of those persons to share in the tribal funds?—A. I can only answer that question from my experience in the practice in the States of Louisiana and Texas. In the State of Texas some twenty years ago there was a large amount of land litigation in which the question of heirship was involved, based on various land scrip issued by the public of Texas and the State of Texas. I had quite a number of these cases in the courts of Texas, and also some in my own State, and the customary fee was 50 per cent of the amount recovered. And I also had a large amount of railway litigation in Louisiana for some fifteen years, a number of those cases going to the Supreme Court of the United Sates and nearly all of them to the supreme court of the State. In those cases the prevailing fee was from 25 per cent to 50 per cent. The most extensive suit in which I was counsel the claim was some seventy-odd thousand dollars, and my contract with my clients was for 20 per cent, and they to pay all costs, traveling expenses, and necessary court costs, stenographer's fees, etc. I would say that under the conditions that you have mentioned, I should say a fee of at least 20 per cent would be a proper fee.

Associate Judge FOOTE. Suppose that these gentlemen who are now seeking to have a fee allowed had commenced this litigation after these judgments had become final by Supreme Court decisions, and had secured legislation by means of which these judgments could be reopened, and had tried several hundred of these cases involving the taking of much testimony in several States, and had succeeded in recovering several million dollars of property, what amount of fee would you say would be a reasonable fee?

A. I would say a fee of 20 per cent would be a proper fee. And in connection with this matter I have made some investigation of the various fees charged by the attorneys in Washington for the Indian tribes in the legislation affecting same, and the prevailing fees were from 10 per cent to 25 per cent on large amounts.

Associate Judge FOOTE. You don't know any cases involving the amount of property and amount of land involved in this case?

A. I have only one case in mind, the famous Mina Gains case, in which a large amount of property was involved, which went through the supreme court of Louisiana and the Supreme Court of the United States. My impression is that there was a final compromise of that case, and that there was a fee of 40 per cent paid to the various attorneys who were in that case at different times.

Associate Judge FOOTE. Suppose you as a business man and a lawyer had had litigation of this sort and had employed these gentlemen and lawyers in a professional capacity, in what light would you consider a bargain made on the basis of 9 per cent of the amount recovered?

A. I would say it was exceedingly reasonable.

Associate Judge FOOTE. From your standpoint?

A. From my standpoint. I had in mind a parallel case, where a final judgment of the Supreme Court of the United States, in which was involved a large amount of bonded indebtedness, against the heirs of Thos. A. Scott, of Pennsylvania, and judgment had been made final, and a firm of lawyers of St. Louis had been employed to endeavor to secure a settlement or compromise. In that case the attorneys agreed finally upon a basis of paying the heirs $100,000, and the attorneys who recovered that amount received 50 per cent of the amount. So I would say in this case, with judgments establishing the rights of these persons, and then securing legislation, with the immense amount of labor in connection with the securing of such legislation, and the preparation of the cases for trial, the taking of testimony, and the expenses of travel and other expenses, I would say, were I in that condition, I would gladly pay 50 per cent of the amount recovered.

By Mr. MANSFIELD:

Q. You just now spoke, as a business man, how you would regard a contract for the recovery of property which you considered lost to you; what has been your business experience—to what extent have you handled business matters?—A. As I said, I have been in active practice for twenty years and have had a great deal of experience in contingent litigation and in litigation in railway suits for large amounts, and my experience has been that from 25 per cent to 50 per cent is the prevailing fee on amount recovered.

Q. That is in your experience as a lawyer?—A. Yes, sir.

Q. Have you also handled business interests in quite a large way apart from your profession?—A. Yes, sir.

Q. Where did you receive your legal education and training?—A. I graduated from the Columbia Law School of New York in 1874 and was admitted by the supreme court of that State, and practiced in the courts of that State, and then went to Louisiana, and was also admitted by the supreme court of Texas, and have practiced in the Supreme Court of the United States for many years.

Q. You have practiced before all the courts you named?—A. Yes, sir; and before the Federal courts in the States in which I lived, and before the court of appeals at New Orleans, and represented the State in considerable litigation and in suits against railway corporations.

Judge FOOTE. A lawyer has to be pretty well posted in Louisiana to be admitted by the supreme court, does he not?

A. Yes, sir; he must pass before the supreme court and the court examines him in person before he is admitted.

Chief Judge ADAMS. Judge Shepherd, you have stated that with reference to litigation—railway litigation and land litigation—in the State of Texas that your fee in those matters was from 20 per cent to 50 per cent?

A. Yes, sir.

Judge ADAMS. In fixing a fee in those cases was your fee governed by the amount involved?

A. No, sir.

Judge ADAMS. In other words, would you charge as great a per cent for collecting twenty million dollars as you would for collecting five million?

A. No; I would not charge as much for collecting twenty million as I would five million.

Judge ADAMS. As much per cent?

A. That is what I mean.

Judge ADAMS. Then in fixing a contingent fee you would be governed largely by the amount involved in the litigation?

A. In the amount of railway litigation—some of those were large amounts, varying from five thousand to ten, fifteen, or twenty thousand—in those cases

I made no difference as to the amounts; that is, I would collect the same fee for a $20,000 litigation as I would for a ten—the same per cent. In those railway matters, unless the litigation was of considerable value, I would not take it at all on a contingent fee.

Judge ADAMS. Judge Shepherd, you are evidently a man of considerable business affairs and also an able lawyer, having practiced law for thirty years. What is the largest fee you ever received from any of those transactions you have mentioned?

A. The largest fee I ever received was in a suit of Carroway *v.* Houston and East Texas Railway Company. It was a fire loss that burnt the town. I did not represent the insurance company. The claim amounted to $72,000. I had a contract with my clients for 20 per cent. They had had certain attorneys in Texas who brought suit in Texas, but lost them upon a plea to the jurisdiction of the court; those attorneys had taken the case for less. I made my contract with the understanding that I was to have all the cases, and had my clients sign the contract, and my fee there was 20 per cent, with my necessary expenses, amounting to nearly $2,000, paid; my fee amounted to $8,500.

Judge ADAMS. What was the amount involved?

A. Seventy-two thousand dollars, and I recovered $42,000. In that connection I had another large fee passed on by the supreme court in an administration matter. In that case I represented one of the six heirs. My client's claim was one-sixth of an estate valued at $300,000. The estate, however, was not in litigation. There were a number of claims and judgments that had been piled up against the mother—the administratrix. The supreme court allowed me 10 per cent on the amount recovered. There was no dispute about my client's ownership and interest in the property, but there was a claim against her, she having received from the estate a certain amount of money, and it was attempted in the settlement to charge her with that amount. The supreme court allowed me a fee of 10 per cent in that amount, which was some $7,500.

Judge ADAMS. Judge Shepherd, I understood you to say in your testimony in answer to a question by Judge Foote, that taking into consideration that the attorneys for the Choctaw and Chickasaw nations secured the legislation and paid their expenses in connection with these cases that a fee of 9 per cent would not be an excessive allowance?

A. Yes, sir.

Judge ADAMS. Suppose the law provided that the expenses of the trial of these cases should be paid by the nations, would that change your estimate?

A. Not on 9 per cent, because I would consider the attorneys in addition to court fees that were incidental to the litigation, they would have necessarily spent a considerable sum of money in securing testimony and in maintaining an office force. I would consider, even if all necessary expenses were paid, that 9 per cent would be a reasonable fee.

Judge ADAMS. Is is your opinion as a lawyer that those would be reasonable expenses—the expenses you enumerate here?

A. Yes, sir.

Q. Suppose the law provided that the expenses were to be paid; would that change your opinion?—A. It would change my opinion if the fee was higher than 9 per cent. I believe 9 per cent to be a very reasonable fee if all expenses were paid. I charged my fee of 20 per cent because my clients paid all expenses; otherwise I would have charged 50 per cent.

Judge ADAMS. Now, as I understand you to say, a fee of 20 per cent would not be an excessive fee?

A. No, sir.

Judge ADAMS. I want to ask you this question: If this court should find as a fact that 2,000 persons known as court claimants had been denied citizenship in the Choctaw and Chickasaw nations and thereby refused allotments and denied the right to participate in the distribution of the tribal property belonging to these two Indian tribes, and should further find as a fact that those persons and each of them so denied would have been entitled to property worth in the sum of, say, $5,000 had their names been placed upon the roll as Indian citizens of either of said tribes, then the fee of said attorneys in that case would be how much, according to your estimate of 20 per cent?

A. It would be between 10 and 20 per cent.

Judge ADAMS. What would it amount to in the aggregate?

A. I don't know.

Judge ADAMS. Will you please make the figures?

A. It would amount to $2,000,000 at 20 per cent.

Judge ADAMS. What would it amount to at 9 per cent?

and in Texas and the Indian Territory, that the fees were contingent and large; the fees exacted from many claimants were 50 per cent of amount recovered.

Chief Judge ADAMS. In citizenship cases?

A. Yes, sir.

Associate Judge WEAVER. You understand that was the general fee?

A. Yes, sir; from 25 per cent to 50 per cent, depending on the case.

By Mr. MANSFIELD:

Q. You understand the greater part of the bar of the Territory occupied that side of the question?—A. Yes, sir; I understand that a great majority were engaged on the other side of the question.

Q. Was it your understanding that they made any efforts to defeat this legislation?—A. My understanding was they made strenuous efforts to defeat the legislation.

Q. From your information on this entire matter how would you regard the claim—from a hypothetical question asked you; how would you regard the chances of success in bringing about this—to recover anything; would you regard it as a desperate claim?—A. I will answer that this way; I would regard that very much as the civil code—I would regard it as a very desperate chance to recover at all.

Q. Is it a fact or is it not that element in your opinion should be considered largely in fixing a compensation?—A. I think that element should be considered largely.

Chief Judge ADAMS. You spoke, Judge Shepherd, with reference to other fees that had been paid; do you know of any instance where a fee has been allowed a lawyer or firm of lawyers amounting to $1,410,000 for six years' service?—A. I have none in my mind just now that I recollect. I stated that in that Gains case there was an immense fee allowed. That was for more than six years' service; it covered a period of twenty-five or thirty years.

By Mr. MANSFIELD:

Q. Do you feel that in the matter of a contingent contract of this sort the question of whether or not similar fees have been allowed ought to be a controlling factor?—A. No, sir.

Q. What is your opinion about that?—A. I have just refreshed my recollection. When Judge Adams's question if I knew of a contract where a lawyer was entitled to a fee as large as this for six years' service; I don't know of a fee that amounts to dollars and cents to that amount, but I do know of a contract made by the State of Louisiana with John McHenry, in which he received a fee, I suppose if properly valued, would have amounted to very nearly that much. He was engaged some ten years at Washington before the United States Land Office as attorney for the State for the recovery of lands which the State of Louisiana considered was due it by the act of 1849.

WILLIAM H. FULLER, a witness for petitioners, after being duly sworn, testified as follows:

By Mr. MANSFIELD:

Q. State your name, Mr. Fuller.—A. William H. Fuller.

Q. What is your age?—A. Thirty-five.

Q. What is your profession?—A. Attorney at law.

Q. How long have you been engaged in the practice?—A. Since June, 1891.

Q. Where were you admitted to the bar, Mr. Fuller?—A. I was admitted to the bar in Ohio before the supreme court.

Q. Did you practice in that State?—A. I did.

Q. How long have you been in the Indian Territory?—A. Nearly three years—three years next month.

Q. Mr. Fuller, are you fairly familiar with the course of events in what is known as citizenship judgments against the Choctaw and Chickasaw nations?—A. I think I am.

Q. Are you fairly familiar with the litigation before the courts and the efforts to secure legislation?—A. Yes, sir; I am.

Q. Assuming for the purpose of this question that these tribes, the Choctaw and Chickasaw nations, under an act of Congress which gave the Dawes Commission and the United States courts jurisdiction of citizenship matters; assuming that by the judgments of the courts for the central and southern districts of the Indian Territory, that approximately 4,000 persons by reason of the judgments of these courts, whether directly or indirectly, were given

dians, what, in your opinion, would have been a reasonable compensation at that time?

A. I could only answer that from my litigations and knowledge of contracts made by attorneys in Washington in representing the various Indian tribes in legislation by Congress.

Judge ADAMS. In other words, as I understand, it is a custom to charge the Indians more than you would other clients?

A. No; it may be a custom, I think possibly is. I listened to a debate in the Senate in March of the present year in which this question was discussed as to the fees charged Indians in securing appropriations and legislation, and Senator Teller, in the course of the debate, made the statement that in his thirty years' experience in the United States Senate he had noticed that Indians were given to making contracts with nearly everybody, and when pay day came around they were not ready to pay, and he mentioned in that connection that heirs of Albert Pike were still suing for services rendered by him. And I judge from that that in making contracts with Indians they were higher than would have been made with white people.

Associate Judge WEAVER. In your answer to these questions as to what a reasonable fee would be, what do you base your answers upon? That is to say, is it based entirely upon the amount of actual work they did, or based on that and the benefits derived by their clients?

A. On the work and benefits derived.

Judge WEAVER. Do you take into consideration in making that answer not only the work in court, but also the work that was done in securing legislation?

A. I take both. I could not well put an estimate on the amount for securing legislation, but would say, taking the court work for six years, in constant labor before the courts during that period of six years, while court was in session representing one side in every case that comes before the court, I would say that this fee of 9 per cent on the amount saved to the entire tribe, so that every member of the Choctaw and Chickasaw nations was a beneficiary of these services, I would say a fee of 9 per cent was a very reasonable fee, without even the legislation. It took six years of constant labor and constant expense.

Associate Judge FOOTE. Would your estimate of 9 per cent be based largely upon the proposition or not that these gentlemen had undertaken what appeared to be a desperate case, and that they had secured the defeat of millions of dollars these people had against the Indians, would you consider the element of the defeat a large element to be considered or not?

A. I would answer that in this way, that while I would, of course, base the fee in a measure on the benefits to be derived, because if they received nothing they probably would have nothing to pay with—I would say that would be a considerable element. Their case was a hopeless one; they were in a position to lose this valuable property of $15,000,000; had lost it. It appeared as a hopeless enterprise under these conditions.

Judge FOOTE. I understand you are of the opinion that 9 per cent on the amount saved the tribes by the efforts of these gentlemen, both in the court and out of court, is a fair and reasonable fee?

A. Yes, sir.

By Mr. MANSFIELD:

Q. Have you by your residence in the Indian Territory gained a knowledge of the elements opposed to us in this matter, and the bitterness of the fight in these cases, and the extent of inerest the bar has in the matter generally upon the other side?—A. My understanding of conditions here is that on the part of these claimants there was a very hostile feeling toward the attorneys who represented the tribes, and that they labored under great difficulty in the matter. There appears to be a sentiment opposed to them, which made their work not a pleasant work, but a very unpleasant work. I understand the hostile feeling to be very strong over the Territory toward these attorneys in their fight.

Q. I will ask you if it is not true that a great majority of the bar in the Choctaw and Chickasaw nations has not been engaged on the other side of these cases?—A. That is my understanding.

Q. And that they had an interest on the other side in putting these people on the rolls?—A. As I said to have some persons enrolled, and in my investigation and in consulting with attorneys that practiced before the Dawes Commission

Judge ADAMS. Do I understand you to say that a fee of $3,000,000 would not be an excessive fee for services performed by these gentlemen?

A. In answer to that I will say this, that as a business proposition if I had $15,000,000 worth of property and the decision of the Dawes Commission and the decision of the United States courts and the Supreme Court of the United States had decided against me, I would consider that if I could regain $15,000,000 by paying $3,000,000 it would be a good business proposition. It would be a good business proposition to enter into that contract in the first instance, and would be a fair price if I recovered.

P. D. BREWER, a witness for petitioners, after first being duly sworn, says:

By Mr. MANSFIELD:

Q. Mr. Brewer state your name to the court?—A. P. D. Brewer.

Q. What is your age, Mr. Brewer?—A. 42.

Q. What is your profession?—A. Lawyer.

Q. Where were you admitted to practice law?—A. In Sebastian county, Ark.

Q. How long have you practiced law?—A. About eighteen years.

Q. How long have you practiced law in the Indian Territory?—A. Eight years.

Q. Did you have any knowledge of conditions and the practice here before removing to the Territory, to any extent?—A. To some considerable extent. I lived within a mile and a half of the line all my life.

Q. Are you one of the attorneys for the Missouri, Kansas and Texas Railway at this time?—A. Only in a local way.

Q. Have you any business connections in the town outside of your practice? Are you connected with any business institution in any way?—A. I am a director in the First National Bank.

Q. What is the extent of your knowledge of Indian matters? Are you familiar with legislation by Congress in regard to Indian matters?—A. I think so.

Q. What is the extent of your acquaintance with members of the bar in the Indian Territory, and the Choctaw and Chickasaw nations?—A. Very considerable. I know personally, I think, by far the majority of the attorneys of the Indian Territory who have gained any degree of prominence.

Q. Are you also in a general way familiar with the practice they have and the character of the business in a general way?—A. Yes, sir; more or less.

Q. Now, you know in a general way as to who is and who is not engaged in what is known as citizenship business?—A. I think I know most of the lawyers who had any very considerable amount of citizenship business.

Q. Mr. Brewer, is it not true that the majority of the bar in these two nations had that character of business?—A. I think so.

Q. Were you here when these cases were tried in the central and southern districts of the Indian Territory?—A. I was here when the first case was made up to go before the Dawes Commission, which permitted us to have until September 2, 1896, in which to file.

Q. You refer to the act of June 10, 1896, giving the Dawes Commission jurisdiction to hear and determine?—A. Yes, sir; I was practicing in the Territory at that time, and practiced here continuously up to the time when the United States courts heard these cases on appeal.

Q. Then there was a provision of law which gave an appeal from the Dawes Commission to the United States courts?—A. There was.

Q. And afterwards a provision granting an appeal on the constitutionality of the question to the Supreme Court of the United States?—A. Yes, sir; I took a case through on that proceeding.

Q. Are you familiar with the litigation here, more or less, and in the Supreme Court of the United States which resulted in what is known as the Stephens case?—A. Yes, sir.

Q. How were these judgments, after the decision in the Stephens case, regarded generally by lawyers throughout the Territory?—A. My own judgment was that they were final and binding; and from counsel and conversation with those whom I considered the best lawyers in the Territory I think it was considered so among the best lawyers.

Q. Do you remember when you first heard that my firm, or any member of the firm, announced that they were going to undertake the work of undoing these judgments?—A. I was at Muskogee at the time you and Mr. Cornish were trying to impress your views on the Commission.

Q. I will ask you how many lawyers from the Choctaw and Chickasaw nations were present?—A. I know there was quite a number of prominent law-

yers present, including Mr. Herbert, of Ardmore. There was such a number present that two of us were selected to make arguments in what was known as "citizenship claims." We selected Mr. Herbert as one of the men who would argue the matter before the Commission, and some other gentleman—I can't speak his name just at this moment.

Q. That was the first knowledge you had of such an undertaking?—A. That was my first knowledge that it had ever been seriously contended that service be had on both nations.

Q. Do you remember about what date that was?—A. No; I do not.

Q. Can't you state about what year?—A. My impression is, now, it was about four years ago.

Q. Mr. Brewer, I want you to reply frankly how the bar of the Territory seemed to regard this effort by us?—A. We just laughed at it is as well as I can express it. I mean by that that we thought it so ridiculous. I had and I think a great many more lawyers had the same opinion. I speak now more especially of one point that was submitted in the test case as to the question of both nations having to be made parties to suits.

Q. Do you remember whether the matter created any considerable stir among the lawyers?—A. I think there was.

Q. Do you remember any other gentleman of prominence having committed himself as to what the conditions were?—A. I don't know that I can call names. I think that my associates among the bar very generally agreed there was nothing to it.

Q. That was as to the merits of the legal proposition. Now, as to our success in this enterprise, how did the bar regard that; I mean as to our success at that time when we first mentioned the proposition, how the bar regarded our chances of success?—A. I didn't think you could do it, and I think that was the general opinion at that time. It never occurred to me that there would be an attempt made to procure legislation.

Q. During these efforts of ours to procure legislation, from that time to the end of our efforts, have our efforts been combated by the bar of the Indian Territory generally?—A. I think to the utmost of their ability.

Q. What has been the effect of that opposition?—A. I think almost all who were claimants have been actively opposed to you, and I think almost all attorneys representing claimants have been actively opposed to you.

Q. Do you know whether they had an organization for that purpose and pursued the matter to Washington or not?—A. I have understood that the attorneys for claimants organized. I did not join with them in any instance. I know as a matter of general knowledge that they proceeded to Washington and filed some sort of a suit, and I assume that they organized, but I had no part with them.

Q. Mr. Brewer, considering all these facts, that we entered into a contract with these tribes at that period to endeavor to set aside these judgments and defeat the claims of the persons named in the judgments; that we commenced the proceeding before the Dawes Commission in the latter part of the year 1899, took the matter to the Secretary of the Interior, and took such other steps here in court which you are familiar with; that we then took the matter to Congress and procured the passage of an act, or rather the adoption of a treaty by Congress, containing a provision for the erection of a special tribunal known as the Choctaw and Chickasaw citizenship court to try these legal questions raised by us, providing for the institution of a test suit; that we brought the test suit and were successful; that the lawyers on the other side endeavored to test this matter in the Supreme Court of the United States; that we appeared before the Supreme Court in that matter, and that we appeared in this court in the trial of these cases, and defeated, we will say, approximately 3,000 persons, what would you consider a reasonable fee, contingent upon success, to have been for the services rendered in this matter, considering the character of these claims at the time this matter was undertaken and the amount of property recovered and restored to the tribes?—A. I think that, viewing the matter from the standpoint in which it was viewed at the time you commenced these operations and the apparent hopelessness of the undertaking, I would consider a contingent fee, or a contract made for a fee at that time, for 10 per cent would have been a reasonable fee, and I place it this low because of the magnitude of the undertaking and of the reward to be gained in view of success. Had the same circumstances prevailed in a matter of ordinary size and such as usually come before courts and within the experience of practicing lawyers, I would have thought a much larger con-

tingent fee would not only have been reasonable, but would have been proper and just. In this amount I take into consideration all the circumstances you have stated and as I have personal knowledge of conditions as they then existed.

Q. You are thoroughly familiar with all the circumstances in this matter, are you not, Mr. Brewer, the nature and extent of our services?—A. I am entirely familiar in what you have done so far as the matter has been before the courts and before the Departments; it has been a matter of public knowledge.

Associate Judge FOOTE. You have yourself, or not, been engaged in litigation before this court where these gentlemen were on the other side?—A. I have.

Judge FOOTE. You think, considering all the circumstances which you have detailed, that a fee of 9 per cent based on the amount saved to the tribes by virtue of the trial of these suits, that that would be a reasonable fee or unreasonable fee, based on the recovery; you think a fee of 9 per cent or 10 per cent on fifteen or twenty million dollars saved is a reasonable fee or not?—A. I will answer that in this way: This matter is so far beyond anything I have ever been engaged in or have any personal knowledge of I know nothing about giving an opinion as to what the services were worth. I base my opinion upon what a reasonable fee would have been under the circumstances as they existed when the contract was made.

Mr. MANSFIELD. I will ask you this further question: If you had had fifteen or twenty million dollars of property in the same condition that this property was at the time this work was undertaken by us, I will ask you whether you would have given us a contingent contract to pay us 9 per cent out of any amount we might recover for you?—A. If I had had property interest in any amount, whether great or small, and had been situated as the nations were at that time, and knew the conditions and understood them as I did at the time, and had the opinion I had at the time, I would have given the sum gladly, or more. I would have entered into such a contract.

AFTERNOON SESSION.

WILLIAM T. HUTCHINS, a witness for petitioners, after first being duly sworn, says:

By Mr. MANSFIELD:

Q. Mr. Hutchins, just state your name to the court.—A. William T. Hutchins.

Q. What is your age?—A. Fifty-six.

Q. Where do you live?—A. Muskogee, Ind. T.

Q. How long have you lived at Muskogee, Ind. T.?—A. A little over fifteen years.

Q. What is your profession?—A. I am an attorney at law.

Q. Where did you receive your legal education?—A. I studied law nearly three years in the office of an attorney at Danville, Va., and graduated from Yale College.

Q. Have you ever practiced except in the Indian Territory?—A. Yes, sir; in Virginia for several years and in the State of Arkansas for fourteen months, and removed then to the Indian Territory.

Q. What character of business have you principally been engaged in, Mr. Hutchins?—A. Well, somewhat changing at various times. When I first commenced practice in the Indian Territory I had largely a collection business, and was subsequently for quite a long time attorney for the Cherokee Nation, and during that time handled all the citizenship cases of the Cherokee Nation. For the last few years my practice has been largely corporation.

Q. In the course of the practice of your profession in these Indian matters have you had your attention called to the legislation affecting the Five Civilized Tribes; and if so, to what extent?—A. To a very large extent. I have had as much Indian practice as any lawyer in the Indian Territory, in the Cherokee Nation.

Q. Mention to the court some of the suits you have handled for the Cherokee or Creek nations.—A. I have had a large number of suits before the courts for the Cherokee Nation, including all their citizenship cases, and now have two suits before the court for the Cherokee Nation amounting to a good many thousand dollars.

Q. In the course of the performance of these duties, have you gone to Washington City frequently?—A. Yes; very frequently before the Court of Claims,

as well as before the Supreme Court of the United States. I was attorney for the Cherokee Nation in the celebrated Delaware case.

Q. To what extent are you acquainted in the Choctaw and Chickasaw nations?—A. Very considerable.

Q. Acquainted with the practice and the lawyers of these two nations?—A. Yes, sir; in fact, at one time, when they had only three courts in the Indian Territory, I followed the court at Ardmore and South McAlester.

Q. You remember the Indian Territory Bar Association which has met here for several years past?—A. Yes, sir.

Q. Are you familiar with what is known as the citizenship cases in the Choctaw and Chickasaw nations, and familiar with the legislation affecting the same?—A. Yes, sir; quite familiar.

Q. I refer now to cases in which judgments were rendered against the Choctaw and Chickasaw tribes in the courts of the central and southern districts of the Indian Territory, under the provisions of the act of June 10, 1896.—A. Yes, sir.

Q. And appeals granted to the courts from the findings of the Commission, and also familiar with the granting of appeals to the Supreme Court of the United States on the question of constitutionality?—A. Yes, sir. I had charge of that case before the Supreme Court.

Q. Can you remember the citation?—A. It is in Cherokee Nation *v.* Stephens (184 U. S.)—not positive that is the correct citation.

Q. At any rate, by that decision the constitutionality of the legislation whereby these judgments were rendered in the Cherokee and Choctaw and Chickasaw nations was affirmed by the Supreme Court?—A. Yes, sir.

Q. Do you remember when the opinion in the Stephens case was rendered?—A. In the spring of 1898 or 1899; 1899, I remember the Curtis bill had been passed and the Dawes Commission was in Washington at the time.

Q. Was the decision in the Stephens case considered as a final settlement of the right of these people to allotment of lands?—A. Yes, sir.

Q. When did you first hear of that question and by whom?—A. I think by you gentlemen; I discussed it with you quite frequently. I remember being in Washington City when yoh were working on it.

Q. Do you remember what year?—A. I think 1900.

Q. Mr. Hutchins, I would like for you to state to the court without further interrogation from me about how familiar you are with what was done by our firm in that matter.—A. I was in Washington at various times when you and Mr. McMurray were there, and I talked over this matter with you, and I believe you sent me copies of some briefs in these cases; and I kept pretty well abreast with what was going on before the courts and Congress. I know there were some suits instituted here before there was any legislation on the part of Congress looking to that end and raised questions which were afterwards referred to the citizenship court. I am certainly familiar with a great deal of the work that was done.

Q. Mr. Hutchins, I will ask you this general question, from your knowledge of conditions existing here and the work performed by our firm, which I will recapitulate: Assuming that in the year 1899, just a month after the decision in the Stephens case, and at a time when everybody, including the bar of the Indian Territory, regarded this property as a loss to the tribes, we undertook with the tribes to relieve them of these judgments and restore to them that property, we will say approximating eighteen or twenty million dollars; that in pursuance of that we went before the Dawes Commission and had the Choctaw and Chickasaw nations, by reason of our advice, to refuse to close their tribal rolls on the ground that they contained the names of court claimants; we followed that by filing a similar objection, supported by argument and briefs, before the Dawes Commission, and followed that to the Secretary of the Interior, and being refused any relief from that department, then filed suits in the southern district convincing the Department that it was hazardous to proceed with the adjudication of the questions raised by us; and that as attorneys for the tribes we negotiated several treaties, two of which failed of ratification, and then appeared before Congress and pressed our contentions, and finally succeeded in having a treaty adopted constituting a special tribunal; appearing before that court and arguing the questions thus raised in a test suit known as the Riddle case, and after a decision in this test case, then appearing before the Supreme Court of the United States in the Joins and Blake cases in a proceeding for a writ of prohibition, which raised the question of the constitutionality of the act

creating this court, and succeeded in sustaining the constitutionality of this court; and then appearing before this court in the trial of all of these cases, involving an examination of the records, trips back over a large portion of the country, back to North Carolina, South Carolina, Texas, Arkansas, Tennessee, Georgia, Alabama, Mississippi, Louisiana, Virginia, and to different portions of the Indian Territory, preparing testimony in these suits, defeating 3,000 or 3,600 people. Under these circumstances what do you consider a fair and reasonable compensation, taking the circumstances under which the contract was entered into, for services rendered by us in this matter?—A. In all Indian cases where a court allowed fees I never knew of a case where they allowed less than 10 per cent, and as a lawyer consider that a reasonable fee; and had I been similarly situated would have been glad to have had my case taken for that.

Q. Mr. Hutchins, are you able to state to the court anything about the character of resistance with which we met in trying to get this matter fixed?—A. I was in Washington on several occasions, and know of the opposition that was thrown in your way. There was a large number of court claimants represented there, and they had able lawyers and appeared before the committees, etc., and the resistance was very considerable.

Q. Is it not a matter of fact that in the Choctaw and Chickasaw nations the court claimants were supported by the noncitizen element of the country?—A. Yes, sir; I think that is true.

Q. And if practically the entire bar of the two nations was not interested in various contracts themselves to put these people on the rolls?—A. Yes, sir; I think nearly every lawyer of any standing was aligned on that side.

Q. That matter led to very bitter opposition to every measure proposed by us?—A. Yes; I think it did.

Q. Mr. Hutchins, these services covered a period of five or six years, did they not?—A. About six years.

Q. Are you also familiar with the fact that we were appearing also in general lawsuits for these tribes? As their general attorneys for separate matters before the Dawes Commission, such as Mississippi Choctaw matters?—A. Yes, sir; I have been there with you.

Q. Do you know whether that was an entirely separate matter from the other undertaking?—A. I so understood it.

Q. Would the fact that we were receiving a salary of $5,000 from each of the tribes for other services vary your statement that this was a reasonable fee?—A. No; not at all; I consider that separate.

Associate Judge WEAVER. I was going to ask you this question: Would the fact, if it be a fact, that the value of the allotments of these people who have been declared by us not entitled to citizenship amount to, say, $15,000,000 or upward, would you consider the 10 per cent you speak of as a fair allowance, amounting to a million and a half dollars, would that change your answer?

A. Ordinarily that would; but, under the peculiar circumstances, I don't think it would. Considering the character of the services performed and the conditions that existed at the time this contract was entered into, and considering

A. Ordinarily that would, but under the peculiar circumstances I don't think the large amount involved would cut any figure in the case.

By Mr. MANSFIELD:

Q. If you had had $20,000,000 worth of property in the condition in which this was at the time when you first remember having talked with us about this matter, I will ask you whether or not, as a business man, as well as a lawyer, you would have been willing to enter into such a contract?—A. I undoubtedly would have.

Q. In other words, you think this is a contract any business man would have entered into?—A. Yes, sir; with the outlook then.

Associate Judge FOOTE. Suppose that the cost, the expenses of travel, and the taking of testimony, and things of that character would be paid for outside of this compensation, would that make any difference?

A. Yes, sir; I think that would make some difference, if it was actually paid.

Judge FOOTE. To what extent?

A. Probably 1 or 2 per cent. We always take that into consideration in making a contract.

Judge FOOTE. Suppose these expenses were to be paid by law, what would be your opinion then?

A. Probably that might count 1 per cent.

Judge FOOTE. You think, then, exclusive of those expenses, or do you not, that a fee of 9 per cent on the value of the property restored to the Indians—that that would be a reasonable and proper fee?

A. Yes, sir; I think so.

Judge FOOTE. That would be a reasonable and proper contract?

A. Yes, sir; I think a contract I would have made as a business man.

Mr. MANSFIELD. If the court please, we have nothing further right here at this time.

Chief Judge ADAMS. Do you desire to offer any further testimony?

Mr. MANSFIELD. We have some schedules we desire to offer; and I would like to confer with Mr. McMurray and Mr. Cornish.

(A conference between Messrs. Mansfield, McMurray, and Cornish is had, after which Mr. Mansfield addresses the court as follows:)

Mr. MANSFIELD. Now, if the court please, I would like to be sworn, if necessary. I was sworn the other day when I gave my testimony. I want to supplement my evidence of the other day. I want to read as a part of my testimony in this matter the following statement made by Charles J. Bonaparte and Clinton R. Woodruff—made to the Secretary of the Interior February 25, 1904, in regard to this matter.

"In a letter sent to us shortly before our visit to the Territory Mr. Brosius charged the firm of Mansfield, McMurray & Cornish, the attorneys for the Choctaws and Chickasaws, with demanding a grossly exorbitant fee for their services in resisting the claims of applicants for citizenship in those nations before the citizenship court in South McAlester.

"With respect to the fee, it appears that the firm claimed the benefit of a contract with the nations, whereby they were to be allowed a contingent compensation of 9 per cent on all moneys saved as the result of their services in resisting applications for citizenship. This would have undoubtedly represented a very large sum of money, since the saving to the nations by the disallowance of claims of this character will almost certainly amount to several millions of dollars. On the other hand, it is to be remembered that the fee was entirely contingent on success; that when it was fixed the chances of success were considered remote and doubtful, and, finally, that the services covered much more than the mere trial of the cases, including the promotion of all the measures which have led ultimately to the rejection of great numbers of fraudulent applications for citizenship in the two nations."

Chief Judge ADAMS. Is that all?

Mr. MANSFIELD. That is all at this time. We will file the schedules I spoke of.

Judge ADAMS (to Mr. MANSFIELD). Since you have read that extract from the report of Messrs. Bonaparte and Woodruff, I wish to ask you, do you know whether or not they had seen your contract?

Mr. MANSFIELD. I can only surmise as to that. They speak as if they were familiar with the contract; it was then on file with the Department at Washington, and I suppose they must have seen it.

Judge ADAMS. Did they discuss it with you?

Mr. MANSFIELD. Yes, sir; they discussed it with me.

Judge ADAMS. Did you understand that they were acquainted with the provisions of that contract?

Mr. MANSFIELD. They were acquainted with its provisions, whether they had seen the contract or not.

Judge ADAMS. What means of knowing did they have as to the work that you were doing here?

Mr. MANSFIELD. In answer to that I will say they appeared to have from some source a pretty thorough knowledge as to what had been done; I don't know from what source; but both of these gentlemen seemed to be pretty familiar with the details of this matter within my knowledge, of the amount of money spent in various matters, and the amount we had been paid by the nations for other services; and they appeared to be thoroughly familiar with not only the contract but with certain expenses which had been under controversy in the Department, which we had incurred in collecting taxes, etc. They brought the matter up that way and said it was claimed that it was too large; they discussed it in that way.

Judge ADAMS. At the time they wrote this report very few of these cases had been tried?

Mr. MANSFIELD. Yes, sir.

Judge ADAMS. Then the only means they had of knowing whether this contract was a reasonable contract or not was as to the per cent in the contract?

Mr. MANSFIELD. No, sir; they state in this report and seem to have stated then. I don't know why they made the statement, except from a knowledge of conditions here and the character of these cases. They made the statement that nearly all these persons would be denied by the court. From that I should say they had made some investigation in these matters and were convinced there was fraud. I take from my conversation with them that was what they based their opinion on. And I take it they must have discussed this matter with the Secretary of the Interior. There is probably another reason why Mr. Brosius was familiar with that; we had waged an extensive warfare on this line and furnished the Indian Rights Association a pamphlet. It seemed to be apparent to everyone that these cases were full of fraud, and they were naturally spoken of in that way.

Judge ADAMS. Is that all?

Mr. MANSFIELD. That is all at this time. I will try to announce to the court in a short while whether we desire to take anything further.

Mr. CORNISH. The record will show that in my evidence at Tishomingo day before yesterday I stated to the court that I would furnish a schedule of the cases tried and disposed of by this court, and also a schedule of the persons affected by the test case known as the Riddle case, and also those persons who had been born to and intermarried with those persons and disposed of by this court. My testimony as given at that time was not entirely correct. The stenographer in preparing the schedule at that time did not take into consideration one case involving four persons, and in another case which had been appealed under two separate numbers, and the persons therein involved were considered twice. That has been corrected now, and the schedule filed now, marked "Exhibit A," is entirely correct.

Mr. MANSFIELD. In my testimony before the court, taken at Tishomingo, I suggested I would prepare and file this exhibit with my testimony, but the same has been prepared by our firm and is correct; therefore I don't desire to file the exhibit referred to by me, but refer to this exhibit just filed, which I have examined and know to be correct. I refer to the exhibit filed by Mr. Cornish and marked "Exhibit A" and ask that it be taken as mine.

Judge ADAMS. Mr. Cornish, I notice you have the list of 211 people here who you say were affected by the judgment of this court in the opinion of this court in the Riddle case. How did you get this information?

Mr. CORNISH. In the form of orders of dismissal from the Commission to the Five Civilized Tribes.

Judge ADAMS. You have inspected the records?

Mr. CORNISH. We have the records in our office and have gone over them thoroughly, and the total 211 was taken from those records.

Judge ADAMS. I notice you have a list of 669 people who you say have been born to and intermarried with persons dependent upon judgment of the United States court for the southern and central districts of the Indian Territory. How did you get this information?

Mr. CORNISH. In the same way.

Judge ADAMS. Does the record show how many have been born?

Mr. CORNISH. You will understand that the persons who were applicants before this court and the persons whose names figure in the judgments of this court, and all persons who have been born of such parents who applied to the Commission, when the Commission received notice of the judgments of this court they would dismiss them.

Judge ADAMS. You have carefully gone over that and verified it in order to be correct?

A. Yes, sir; in order to be correct.

Judge ADAMS. The record in this case shows 449 applicants before the citizenship court whose cases were dismissed for the reason that they were not included in the original application before the Commission to the Five Civilized Tribes under the act of June 10, 1896, and hence this court had no jurisdiction over their cases. This number, 449, whose cases were thus dismissed, are embraced in the 669 persons above referred to in your testimony?

Mr. CORNISH. Yes, sir; that is true.

Mr. MANSFIELD. May it please the court, I have had a conference with my associates, and that is all the testimony we have to offer.

Judge ADAMS. Then, as I understand from the schedule you have just filed with the court, which is marked "Exhibit A," and asked to be taken as a part of the evidence in this proceeding, embraces the number of people who were affected by the judgment of this court in what is known as the Riddle case?

A. Yes, sir.

Judge ADAMS. The number 3,678 at the bottom of the last page of said exhibit is the correct number?

Mr. CORNISH. Yes, sir; that embraces the persons actually denied by this court, and in addition the persons affected by the Riddle case, and also persons born to and intermarried with persons affected by judgments of the United States courts. I will state to the court that we will shortly furnish a supplementary schedule, to be appended to the schedule now furnished and marked "Exhibit A," showing the exact number of persons who were denied by the United States courts for the central and southern districts of the Indian Territory, and who appealed to this court under section 32 of the supplemental agreement, to be marked "Supplement to Exhibit A."

(Supplement filed and marked "Supplement to Exhibit A.")

Court adjourned subject to call of chief judge.

In the Choctaw and Chickasaw citizenship court, sitting at Tishomingo, Ind. T., December 9, 1904.

In the matter of the petition of Mansfield, McMurray & Cornish, attorneys for the Choctaw and Chickasaw nations, to have the court fix a reasonable compensation for services performed by them on behalf of the Choctaw and Chickasaw nations in citizenship cases.

Mr. MANSFIELD, one of the petitioners, addressed the court as follows:

May it please the court, I desire to file as an exhibit to my testimony heretofore given before this court, a letter received from the chief justice of the supreme court of the State of Arkansas. This court is now in session, and it is impracticable to take the testimony of Chief Justice Hill before this court. We accordingly telegraphed him, on December 8, 1904, requesting that he forward us a letter giving his views as to what our compensation should be in this matter. This letter was received by me, addressed to our firm, from the post-office at Tishomingo, to-day, December 9, 1904. The envelope in which it came is postmarked "Little Rock, December 8, 1904, 4.30 p. m.," and the address thereon and the letter is in the handwriting of Judge Hill and bears his signature.

I will ask to have this marked as "Exhibit B" to my testimony.

EXHIBIT A.

Schedule of "court claimant" citizenship cases tried and disposed of by the Choctaw and Chickasaw citizenship court.

No.	Name.	Citizenship claimed.	Admitted.	Denied.	Dismissed.	Total.
	SOUTH M'ALESTER DOCKET.					
1	J. T. Riddle et al. (test case).					
2	C. M. Coppedge et al	Choctaw			1	1
3	J. T. Marshall	do			1	1
4	Ola May McPherren	do		1		1
5	Augustus K. Perry et al. (transferred to Tishomingo docket).					
6	Wm. F. Perry et al. (transferred to Tishomingo docket).					
7	Glenn-Tucker et al	do		124	2	126
8	P. D. Durant et al	do		23	2	25
9	Jack Amos et al	do		1		1
10	James A. McLellan et al	do	26			26
11	Ann Thompson et al	do		7	14	21
12	Lula McKinnon et al	do	4			4
13	James F. Biddie et al	do		67		67
14	Serilda J. Harrison	do	1			1
15	P. S. Lester	do	1			1
16	James T. Leard	do		1		1
17	James H. Womack et al	do		8		8
18	Keturah LeFlore	do	1			1
19	Mary L. Jennings et al. (transferred to Tishomingo docket).					
20	A. A. Spring et al	do		10		10
21	Quintius Herndon	do	1			1
22	W. F. Cobb et al. (erroneously entered on this docket; see Tishomingo docket).					
23	Thomas Brinnon	Choctaw	1			1
24	Alice Lewsaw et al	do		2		2

Schedule of "court claimant" citizenship cases, etc.—Continued.

No.	Name.	Citizenship claimed.	Admitted.	Denied.	Dismissed.	Total.
	SOUTH M'ALESTER DOCKET—continued.					
25	A. F. Cowling	Choctaw		1		1
26	Louis Rocket	do	1		2	3
27	James R. Kelly et al	do		26		26
28	Eliza J. Apple et al	do		5		5
29	John McCarty et al	do		32		32
30	Joseph B. Glenn et al. (dismissed, same parties in another case).					
31	Glenn Tucker et al. (dismissed, same parties in another case).					
32	(No case docketed under this number.)					
33	T. P. Brown et al	do		17		17
34	Mary Ann Thompson et al. (transferred to Tishomingo docket).					
35	John T. Hays et al	do		17		17
36	W. R. Sessums et al	do		37		37
37	Joanna Mickle et al	do		14		14
38	B. F. Thompson	do	1			1
39	Susan S. Benight et al	do		9		9
40	Lula B. Trahern	do	1			1
41	Robert L. Reagen	do	1			1
42	F. K. West et al	do		17		17
43	Mary A. Sanders et al	do		21		21
44	Samuel C. Caldwell et al	do		3		3
45	R. L. Crudup et al	do		33		33
46	S. G. Trout	do	1			1
47	(No case docketed under this number.)					
48	Francis L. Stroud et al	do		11		11
49	Gray W. Phillips et al	do		9	4	13
50	Wm. E. Moore et al	do		6		6
51	Sarah E. Kizer et al. (transferred to Tishomingo docket).					
52	W. R. Cross	Choctaw		1		1
53	J. W. Blassingame et al	Chickasaw		5		5
54	R. H. Hawkins et al	Choctaw		48		48
55	Julia London et al	do		20		20
56	Elizabeth Casey et al	do		10		10
57	Wm. C. Mitchell et al	do		11		11
58	Zora P. Lewis et al	do		54	1	55
59	Ophelia S. Edwards et al	do		5		5
60	Lydia S. Garvin et al	do	1	5		6
61	Henry E. Miller et al	do		26		26
62	Susan Dehart	do		1		1
63	Jennie Brazelle et al	do		4		4
64	Preston Early et al	do		8		8
65	Sarah D. Brogden et al	do		34	2	36
66	W. N. Vandergriff et al	do		4		4
67	Mary M. Harvey et al	do		8		8
68	Wm. E. Moore et al	do		6		6
69	A. W. Cope	do	1			1
70	George H. Cook	do	1			1
71	Helen V. Newton et al	do		5		5
72	Wm. Mitchell et al	do		12		12
73	John M. Grady et al	do		4		4
74	Abraham H. Nail et al	do		6		6
75	Joseph B. Glenn et al	do		143	16	159
76	Glen-Tucker et al	do		98	27	125
77	W. H. Stallings	do		1		1
78	Epsie Underwood et al	do		8		8
79	Francis C. Neely et al	do		12	4	16
80	Nellie J. Gideon et al	do		2		2
81	D. B. Vernon et al	do		6	5	11
82	Hiram Lancaster et al	do		7		7
83	Joanna Horne et al	do		9	5	14
84	Polly Hill et al	do		4	1	5
85	Mattie E. Standley et al	do	5			5
86	Eliza A. Alexander et al	do		10	5	15
87	Louis Hill et al. (transferred to Tishomingo docket).					
88	Noah W. Cooper et al	do		3		3
89	Calvin W. Meek et al	do		6	2	8
90	John Skaggs	do	1			1
91	Francis C. Husbands (transferred to Tishomingo docket).					
92	Bettie Stewart	do	1			1
93	Mary W. Whaley et al	do		6	1	7
94	H. B. Rowley	do	1			1
95	J. M. Human et al	do	12		6	18
96	E. J. Petty et al	do		13	1	14
97	Martha Arnold et al	do		13	1	14
98	Samuel H. Carroll et al	do		12	1	13

Schedule of "court claimant" citizenship cases, etc.—Continued.

No.	Name.	Citizenship claimed.	Admitted.	Denied	Dismissed.	Total.
	SOUTH M'ALESTER DOCKET—continued.					
99	Verna D. Potts et al	Choctaw		5		5
100	Viney Davis et al	do		11	2	13
101	John Mitchell et al	do		18	13	31
102	G. W. Johnson (transferred to Tishomingo docket).					
103	William Sledge et al. (transferred to Tishomingo docket).					
104	James A. Tucker et al. (transferred to Tishomingo docket).					
105	Sarah A. Kelton et al	do		4		4
106	Emily J. Zummwalt et al	do		3		3
107	G. P. Phillips et al	do		17	18	35
108	S. B. Riddle et al	do		18	9	27
109	Jane Marrs et al	do		21	13	34
110	Rebecca C. Harris et al	do		7		7
111	George Wooldridge et al	do			17	17
112	Nancy Henderson et al	do		10		10
113	J. L. C. Pate	do		1		1
114	Ella Bennett et al	do		4	3	7
115	Frank Morgan	do		1		1
116	Charles D. Sullenger et al	do		42		42
117	Mary Goddard et al	do		5		5
118	W. T. Stephens et al	do		6		6
119	Glenn-Tucker et al	do		28	13	41
120	George Lee White et al	do		10		10
121	Molsie Butler	do		1		1
122	Emma Botteroff et al	do		4	2	6
123	George W. Paul et al	do		5		5
124	A. J. Crowson et al	do		1	10	11
125	George Lee White et al. (same parties in No. 120).					
126	Annie J. Hamilton et al	Chickasaw		6		6
127	S. J. Garvin	Choctaw	1			1
128	Wilson H. James et al	Chickasaw	7			7
129	Anna Smith (nee Agee)	Choctaw	7		3	10
	TISHOMINGO DOCKET.					
1	Newt Askew et al	Choctaw		18	2	20
2	Wm. Quint Askew	do		17		17
3	John C. Bradshaw	Chickasaw	1			1
4	Mrs. Kate Gamel et al	Choctaw		11		11
5	Wilson H. James et al. (transferred to South McAlester docket).					
6	J. B. Sparks et al	Chickasaw	2	3		5
7	C. C. Passmore	do	1			1
8	Richard C. Wiggs et al	do	1	2		3
9	E. H. Bounds et al	do	1	6		7
10	John M. Fitzhugh et al	do	2	7		9
11	Charles L. Jones et al	do	1	7		8
12	Wm. P. Thompson et al	do		13		13
13	John L. Wood et al	do	1	2		3
14	Joseph C. Moore et al	do		27		27
15	Melissa J. Smith et al	Choctaw		6	2	8
16	Elizabeth Hignight	do		14		14
17	Ella McSwain et al	Chickasaw	7			7
18	Triphena Pearcy et al	Choctaw		17	2	19
19	Dora Phillips et al	Chickasaw	1	6		7
20	C. J. McKinney et al	do		10		10
21	J. C. Washington et al	do	3	2		5
22	Robt. King et al	do	2	3		5
23	James Doak et al	do	2			2
24	Wm. H. Burch et al G. W. Howard et al J. W. Howard et al	do		4	16	20
25	Mary E. Stinnett et al	do		8	6	14
26	Samuel C. Wall et al	Choctaw		8		8
27	Dick Randolph et al	do		13	2	15
28	Thomas M. Graham	Chickasaw	1			1
29	Lee Heighle et al	Choctaw		4		4
30	A. B. Roff et al	Chickasaw		11		11
31	Robt. Goings et al	Choctaw		106	14	120
32	T. D. Arnold et al	Chickasaw		68	6	74
33	W. F. Cobb et al	Choctaw		23		23
34	Lewis Clay Stinbett et al	Chickasaw		5	2	7
35	H. J. Sorrels	Choctaw		1		1
36	John T. Boyd et al	do	2			2
37	Mary Huffman et al	do		14		14
38	Geo. M. Poe et al	Chickasaw	1	1		2
39	Sarah Palmer et al	do	1	27	1	22

Schedule of "court claimant" citizenship cases, etc.—Continued.

No.	Name.	Citizenship claimed.	Admitted.	Denied.	Dismissed.	Total.
	SOUTH M'ALESTER DOCKET—continued.					
25	A. F. Cowling	Choctaw		1		1
26	Louis Rocket	do	1		2	3
27	James R. Kelly et al	do		26		26
28	Eliza J. Apple et al	do		5		5
29	John McCarty et al	do		32		32
30	Joseph B. Glenn et al. (dismissed, same parties in another case).					
31	Glenn Tucker et al. (dismissed, same parties in another case).					
32	(No case docketed under this number.)					
33	T. P. Brown et al	do		17		17
34	Mary Ann Thompson et al. (transferred to Tishomingo docket).					
35	John T. Hays et al	do		17		17
36	W. R. Sessums et al	do		37		37
37	Joanna Mickle et al	do		14		14
38	B. F. Thompson	do	1			1
39	Susan S. Benight et al	do		9		9
40	Lula B. Trahern	do	1			1
41	Robert L. Reagen	do	1			1
42	F. K. West et al	do		17		17
43	Mary A. Sanders et al	do		21		21
44	Samuel C. Caldwell et al	do		3		3
45	R. L. Crudup et al	do		33		33
46	S. G. Trout	do	1			1
47	(No case docketed under this number.)					
48	Francis L. Stroud et al	do		11		11
49	Gray W. Phillips et al	do		9	4	13
50	Wm. E. Moore et al	do		6		6
51	Sarah E. Kizer et al. (transferred to Tishomingo docket).					
52	W. R. Cross	Choctaw		1		1
53	J. W. Blassingame et al	Chickasaw		5		5
54	R. H. Hawkins et al	Choctaw		48		48
55	Julia London et al	do		20		20
56	Elizabeth Casey et al	do		10		10
57	Wm. C. Mitchell et al	do		11		11
58	Zora P. Lewis et al	do		54	1	55
59	Ophelia S. Edwards et al	do		5		5
60	Lydia S. Garvin et al	do	1	5		6
61	Henry E. Miller et al	do		26		26
62	Susan Dehart	do		1		1
63	Jennie Brazelle et al	do		4		4
64	Preston Early et al	do		8		8
65	Sarah D. Brogden et al	do		34	2	36
66	W. N. Vandergriff et al	do		4		4
67	Mary M. Harvey et al	do		8		8
68	Wm. E. Moore et al	do		6		6
69	A. W. Cope	do	1			1
70	George H. Cook	do	1			1
71	Helen V. Newton et al	do		5		5
72	Wm. Mitchell et al	do		12		12
73	John M. Grady et al	do		4		4
74	Abraham H. Nail et al	do		6		6
75	Joseph B. Glenn et al	do		143	16	159
76	Glen-Tucker et al	do		98	27	125
77	W. H. Stallings	do		1		1
78	Epsie Underwood et al	do		8		8
79	Francis C. Neely et al	do		12	4	16
80	Nellie J. Gideon et al	do		2		2
81	D. B. Vernon et al	do		6	5	11
82	Hiram Lancaster et al	do		7		7
83	Joanna Horne et al	do		9	5	14
84	Polly Hill et al	do		4	1	5
85	Mattie E. Standley et al	do	5			5
86	Eliza A. Alexander et al	do		10	5	15
87	Louis Hill et al. (transferred to Tishomingo docket).					
88	Noah W. Cooper et al	do		3		3
89	Calvin W. Meek et al	do		6	2	8
90	John Skaggs	do	1			1
91	Francis C. Husbands (transferred to Tishomingo docket).					
92	Bettie Stewart	do	1			1
93	Mary W. Whaley et al	do		6	1	7
94	H. B. Rowley	do	1			1
95	J. M. Human et al	do	12		6	18
96	E. J. Petty et al	do		13	1	14
97	Martha Arnold et al	do		13	1	14
98	Samuel H. Carroll et al	do		12	1	13

Schedule of "court claimant" citizenship cases, etc.—Continued.

No.	Name.	Citizenship claimed.	Admitted.	Denied	Dismissed.	Total.
	SOUTH M'ALESTER DOCKET—continued.					
99	Verna D. Potts et al	Choctaw		5		5
100	Viney Davis et al	do		11	2	13
101	John Mitchell et al	do		18	13	31
102	G. W. Johnson (transferred to Tishomingo docket).					
103	William Sledge et al. (transferred to Tishomingo docket).					
104	James A. Tucker et al. (transferred to Tishomingo docket).					
105	Sarah A. Kelton et al	do		4		4
106	Emily J. Zummwalt et al	do		3		3
107	G. P. Phillips et al	do		17	18	35
108	S. B. Riddle et al	do		18	9	27
109	Jane Marrs et al	do		21	13	34
110	Rebecca C. Harris et al	do		7		7
111	George Wooldridge et al	do			17	17
112	Nancy Henderson et al	do		10		10
113	J. L. C. Pate	do		1		1
114	Ella Bennett et al	do		4	3	7
115	Frank Morgan	do		1		1
116	Charles D. Sullenger et al	do		42		42
117	Mary Goddard et al	do		5		5
118	W. T. Stephens et al	do		6		6
119	Glenn-Tucker et al	do		28	13	41
120	George Lee White et al	do		10		10
121	Molsie Butler	do		1		1
122	Emma Botteroff et al	do		4	2	6
123	George W. Paul et al	do		5		5
124	A. J. Crowson et al	do		1	10	11
125	George Lee White et al. (same parties in No. 120).					
126	Annie J. Hamilton et al	Chickasaw		6		6
127	S. J. Garvin	Choctaw	1			1
128	Wilson H. James et al	Chickasaw	7			7
129	Anna Smith (nee Agee)	Choctaw	7		3	10
	TISHOMINGO DOCKET.					
1	Newt Askew et al	Choctaw		18	2	20
2	Wm. Quint Askew	do		17		17
3	John C. Bradshaw	Chickasaw	1			1
4	Mrs. Kate Gamel et al	Choctaw		11		11
5	Wilson H. James et al. (transferred to South McAlester docket).					
6	J. B. Sparks et al	Chickasaw	2	3		5
7	C. C. Passmore	do	1			1
8	Richard C. Wiggs et al	do	1	2		3
9	E. H. Bounds et al	do	1	6		7
10	John M. Fitzhugh et al	do	2	7		9
11	Charles L. Jones et al	do	1	7		8
12	Wm. P. Thompson et al	do		13		13
13	John L. Wood et al	do	1	2		3
14	Joseph C. Moore et al	do		27		27
15	Melissa J. Smith et al	Choctaw		6	2	8
16	Elizabeth Hignight	do		14		14
17	Ella McSwain et al	Chickasaw	7			7
18	Triphena Pearcy et al	Choctaw		17	2	19
19	Dora Phillips et al	Chickasaw	1	6		7
20	C. J. McKinney et al	do		10		10
21	J. C. Washington et al	do	3	2		5
22	Robt. King et al	do	2	3		5
23	James Doak et al	do	2			2
24	Wm. H. Burch et al G. W. Howard et al J. W. Howard et al	do		4	16	20
25	Mary E. Stinnett et al	do		8	6	14
26	Samuel C. Wall et al	Choctaw		8		8
27	Dick Randolph et al	do		13	2	15
28	Thomas M. Graham	Chickasaw	1			1
29	Lee Heighle et al	Choctaw		4		4
30	A. B. Roff et al	Chickasaw		11		11
31	Robt. Goings et al	Choctaw		106	14	120
32	T. D. Arnold et al	Chickasaw		68	6	74
33	W. F. Cobb et al	Choctaw		23		23
34	Lewis Clay Stinbett et al	Chickasaw		5	2	7
35	H. J. Sorrels	Choctaw		1		1
36	John T. Boyd et al	do	2			2
37	Mary Huffman et al	do		14		14
38	Geo. M. Poe et al	Chickasaw	1	1		9
39	Sarah Palmer et al	do	1	27	1	22

Schedule of "court claimant" citizenship cases, etc.—Continued.

No.	Name.	Citizenship claimed.	Admitted.	Denied.	Dismissed.	Total.
	TISHOMINGO DOCKET—continued.					
40	J. W. Sparks et al	Chickasaw		2		2
41	Nannie Watkins et al	do		6		6
42	John P. Holder et al	do		98		98
43	Annie May Paul	do	1			1
44	Althea Paul et al	do	1	1		2
45	S. J. Garvin (transferred to South McAlester docket).					
46	Mary E. & Eli Nail et al	Choctaw		8		8
47	Geo. W. Brooks et al	do	1	4		5
48	J. W. Hyden et al	do		32		32
49	John T. Hunter et al	do		44		44
50	David Davis et al	do		17		17
51	Mrs. A. J. Love	Chickasaw	1			1
52	Charles Goodall et al	Choctaw		7	40	47
53	J. C. Hill et al	Chickasaw		16		16
54	J. W. Thompson	do	1			1
55	J. N. Dorchester et al	do	1	3		4
56	John A. Tidwell et al	Choctaw		15		15
57	James L. Ivey et al	do			15	
58	Winter P. Bradley et al	Chickasaw	6			6
59	Mattie Lee Armstrong et al	Choctaw		4		4
60	Mrs. A. O. Mallory et al	do		11		11
61	Geo. M. D. Holford et al	Chickasaw	1	4		5
62	Wm. J. Forsythe et al	Choctaw		28		28
63	Frank Standifer	Chickasaw	1			1
64	Martha Jones et al	Choctaw		61	9	70
65	O. W. Seay	Chickasaw	1			1
66	Evans Hill et al	do		21		21
67	Wm. W. Arnold et al	do		10		10
68	J. H. Hill et al	Choctaw		14		14
69	J. N. Forbes et al	do		14		14
70	A. B. Hill et al	Chickasaw		42		42
71	D. C. Lee et al	do		14		14
72	Annie James	do	1			1
73	Wm. Neighton Brown et al	Choctaw		97		97
74	Sarah Jones et al	Chickasaw		13		13
75	Z. T. Bottoms et al	Choctaw		70		70
76	Mary Underwood	Chickasaw	1			1
77	Daniel McDuffie et al	do		25		25
78	Sallie Duncan	do	1			1
79	W. R. Pittman	do	1			1
80	W. V. Alexander	do	1		6	7
81	A. H. Law et al	do	2			2
82	Margaret E. Law et al	do		5		5
83	Nancy A. Lafiin et al	do		3		3
84	U. S. Joins et al	do		3	1	4
85	Joe N. Love	do	1			1
86	J. E. C. Albright et al	do	1	1		2
87	Benton S. Burkes et al	Choctaw		8		8
88	John Cornish	Chickasaw	1			1
89	L. F. Rhoades et al	Choctaw		7		7
90	Sarah Shields et al	do		4		4
91	E. A. Evans	Chickasaw	1			1
92	W. W. Poyner et al	do		3		3
93	A. E. Scoby (same party in No. 99).					
94	Wm. L. Thomas et al	Choctaw		6		6
95	Anna Smith (nee Agee) (transferred to South McAlester docket).					
96	Joseph H. Brown et al	Chickasaw		11		11
97	Henry Dutton et al	Choctaw		45	8	53
98	L. L. Blake et al	do	1	13	1	15
99	Arthur E. Scoby	Chickasaw	1			1
100	I. E. Parks et al	Choctaw		31		31
101	Nettie Howell	do	1			1
102	Wm. Duncan	Chickasaw		1		1
103	E. W. Cotton et al	Choctaw	5		2	7
104	Lydia M. Johnson et al	do	2	5		7
105	Sarah Jane Reynolds et al	Chickasaw	2			2
106	Harriet Gordon et al	Choctaw		6		6
107	Walter W. Jones et al	do		15	31	46
108	Rosa Tapp et al	do		3		3
109	Ida Marler et al	do		3		3
110	John Sartain	Chickasaw		11		11
111	W. G. Howard et al	do		6	44	50
112	N. B. Woolsey et al	do	1	2	2	3
113	M. D. Carson et al	Choctaw		2		2
114	Walter L. Beavers et al	Chickasaw		4		4
115	I. E. Parks et al	Choctaw		27		27
116	Bertie Cotton et al	do		2		2

Schedule of "court claimant" citizenship cases, etc.—Continued.

No.	Name.	Citizenship claimed.	Admitted.	Denied	Dismissed.	Total.
	TISHOMINGO DOCKET—continued.					
117	T. J. Minor, jr	Chickasaw	1			1
118	J. M. Crabtree et al	do		21	8	29
119	Anna Smith (née Agee) et al. (dismissed: same parties in No. 129 on South McAlester docket).					
120	Annie J. Hamilton et al. (transferred to South McAlester docket).					
121	Nettie Howell (passed on in No. 101).					
122	Nelson H. Norman et al	do	1		6	7
123	W. R. Story et al	do	1		5	6
124	J. S. Layman et al	do		2	1	3
125	Sarah E. Kizer et al	Choctaw		17		17
126	Mary L. Jennings et al	do			4	4
127	Wm. L. Sledge et al	do		7		7
128	James A. Tucker et al	do	1	1	4	6
129	G. W. Johnson	do	1			1
130	Francis E. Husbands	do		1		1
131	Mary Ann Thompson et al	do	4			4
132	Louis Hill et al	do		11	5	16
133	William F. Perry et al	do		1		1
134	Augustus K. Perry et al	do		4		4
			156	2,798	449	3,403

RECAPITULATION (CITIZENSHIP COURT.)

Total number of applicants	3,403
Total number admitted	156
Total number denied	2,798
Total number dismissed	449
	3,403

[Supplement to Exhibit A.]

The applications of 2,798 persons which were denied by the Choctaw and Chickasaw citizenship court were transferred and appealed to it under sections 31 and 32 of the act of Congress approved July 1, 1902, as follows:

Total number of persons denied by the Choctaw and Chickasaw citizenship court whose cases were transferred under section 31 of the act of July 1, 1902, they having been admitted by the United States court for the central and southern districts of the Indian Territory under the act of June 10, 1896	2,290
Total number of persons denied by the Choctaw and Chickasaw citizenship court whose cases were appealed under section 32 of the act of July 1, 1902, they having been denied by the United States court for the central and southern districts of the Indian Territory under the act of Congress approved June 10, 1896	508
Total	2,798

Total number of persons who were applicants for enrollment as citizens of the Choctaw or Chickasaw nations, dependent upon judgments of the United States court for the central and southern districts of the Indian Territory under the act of Congress approved June 10, 1896, whose applications have been denied by reason of their failure to transfer their cases to the Choctaw and Chickasaw citizenship court after decision by it in the test case of the Choctaw and Chickasaw nations *v.* J. T. Riddle et al., as shown by orders of dismissal of the Commission to the Five Civilized Tribes	211
Total number of persons who were applicants for enrollment as citizens of the Choctaw or Chickasaw nations by reason of being born to or intermarried with persons dependent upon judgments of the United States court for the central and southern districts of the Indian Territory whose applications have been dismissed on account of the denial, by the Choctaw and Chickasaw citizenship court, of the persons through whom they claimed as shown by orders of dismissals by the Commission to the Five Civilized Tribes	669
Total	880

GRAND RECAPITULATION.

Total number of persons denied by citizenship court	2,798
Total number of persons denied by reason of decision of citizenship court in Riddle case	211
Total number of persons denied by reason of denial, by citizenship court, of persons through whom they claim	669
Grand total of persons denied	3,678

EXHIBIT B.

Supreme court of the State of Arkansas. Joseph M. Hill, chief justice. Burrill M. Battle, Carroll D. Wood, James E. Riddick, Edgar A. McCulloch, judges. Thomas D. Crawford, reporter.

LITTLE ROCK, *December 8, 1904.*

MANSFIELD, MCMURRAY & CORNISH,
Tishomingo, Ind. T.

GENTLEMEN: Responding to your telegraphic request to write you my opinion—to be used as evidence—in regard to the work done by you under your contract with the Choctaw Nation and proper compensation therefor:

Until the 1st of November, 1904, I had been engaged in active practice for seventeen years or more at Fort Smith, and my business has carried me continuously with the courts in the Indian Territory. In fact I have been an active practitioner in the courts of the Territory since they were therein established. This practice has necessarily familiarized me in a general way with various contracts between the different nations and attorneys. I am also familiar—not in detail—with work done by you in what is known as the "citizenship cases." I have not appeared before that court, but I have pretty thoroughly investigated its creation powers and limitations. From reports from time to time of attorneys engaged therein, from my own knowledge of many of the claims, and from the public notoriety of your work, I am thoroughly satisfied that you have faithfully, efficiently, and conscientiously performed your whole duties to the Choctaw Nation.

I was recently in the Choctaw council and met the officers and members of it and heard your services fully discussed, and there was but one opinion on the subject, and that was the one I have just expressed.

I understand that your contract calls for 9 per cent of the value of the lands recovered, and I think that compensation fair and just to both parties to the contract, provided it is based on a fair market valuation of the lands recovered.

I do not regard such contract open to objection as overreaching the nation, for I know from its very nature it has required money, industry, unceasing labor, and a high order of legal proficiency to bring the work to a successful termination, and that I know from common understanding of everyone, you have done.

The contract, in my opinion, ought to be performed by the nation. You have performed your part of it.

Yours, truly, JOS. M. HILL.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 373.

TRUSTEES OF METHODIST EPISCOPAL CHURCH, PAW PAW, W. VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH OF PAW PAW, W. VA., AGAINST THE UNITED STATES.

MARCH 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 9, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12951. Trustees of the Methodist Episcopal Church of Paw Paw, W. Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the Senate of the United States referred to the court a bill in the following words:

"[S. 6644, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Methodist Episcopal Church of Paw Paw, West Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any moneys in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church of Paw Paw, West Virginia, the sum of one thousand dollars, in full compensation for the occupation, use and incidental injury to said church by United States military forces during the civil war."

The said trustees of said church appeared in this court April 30, 1907, and filed there a petition in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the buildings and grounds of the Methodist Episcopal Church of Paw

Paw, W. Va., and occupied the old church building of said church as winter quarters during the winter of 1861-62 by General Lander's command of the Federal Army, and that the new building of said church, which had just been built, was occupied for a time by a United States cavalry force and was then completely torn down and the materials used by the Federal troops to build shanties for their camp; that the reasonable rental value of said property during said occupation, including the repairs necessary to restore said property to the same condition as before said occupation, was the sum of $1,000, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 27th of January, 1908.

Coldren & Fenning appeared for the claimants, and the Attorney-General, by W. W. Scott, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Methodist Episcopal Church of Paw Paw, W. Va., as a church was loyal to the Government of the United States throughout the late civil war.

II. During said civil war the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied the same for a brief period of time for hospital purposes, but for how long does not appear; and later tore down said building and used the material thereof in the erection of shanties for troops. The reasonable value of the building at the time of said destruction, together with any prior use and injury thereto, was then and there the sum of four hundred dollars ($400), no part of which appears to have been paid.

III. The claim herein was never presented to any department or officer of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no competent reason is adduced showing why the same was not earlier presented.

Howry, J., on account of illness, took no part in making up these findings.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 9th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 374.

TRUSTEES OF EWING INSTITUTE, PERRYVILLE, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE EWING INSTITUTE, OF PERRYVILLE, KY., AGAINST THE UNITED STATES.

MARCH 10, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 9, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12976. Trustees of the Ewing Institute, of Perryville, Ky., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 6831, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Ewing Institute, of Perryville, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Ewing Institute, of Perryville, Kentucky, the sum of one thousand dollars, in full compensation for the occupation, use, and incidental injury to said institute by United States military forces during the civil war."

The said trustees of said institute appeared in this court March 22, 1907, and filed their petition, in which it is substantially averred—

That during the late civil war the military forces of the United States took possession of the building and grounds of Ewing Institute, of Perryville, Ky., consisting of a large, well-constructed brick building, two stories in height, with an acre of ground, and occupied the same as a hospital from directly after the battle of Perryville, October 8, 1862, until March or April, 1863, and the property thereby was greatly injured; that the reasonable rental value of said property, including the

repairs necessary to restore said property to the same condition as before such occupation, was the sum of $1,000, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the — day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by Percy M. Cox, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Ewing Institute, of Perryville, Ky., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the school building described in the petition and used and occupied the same for hospital purposes for a short period of time, and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was then and there the sum of two hundred and seventy dollars ($270), no part of which appears to have been paid.

III. The claim herein was never presented to any department or officer of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate March 2, 1907, as hereinbefore set forth in the statement of the case, and no reason is adduced showing why the same was not earlier presented.

By the Court.

Filed February 25, 1908.
A true copy.
Test this 9th day of March, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 380.

TRUSTEES OF BAPTIST CHURCH, BRANDENBURG, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE BAPTIST CHURCH, OF BRANDENBURG, KY., AGAINST THE UNITED STATES.

MARCH 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 11, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12959. Trustees of the Baptist Church of Brandenburg, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States referred to the court a bill in the following words:

"[S. 6749, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Baptist Church of Brandenburg, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any moneys in the Treasury not otherwise appropriated, to the trustees of the Baptist Church of Brandenburg, Kentucky, the sum of six hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court March 23, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the property of the Baptist Church of Brandenburg, Ky., consisting of a well-constructed brick church building about 50 by 30 feet in size, with a gallery,

and the same was occupied by a Federal cavalry force, and as a result of said occupation the pews and pulpit were greatly injured or destroyed, the fence burned for fuel, and the property otherwise injured; that the reasonable rental value of said property during such occupation, including the repairs necessary to restore the property to the same condition as before such occupation, was the sum of $800, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 25th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Baptist Church of Brandenburg, Ky., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used the same for military purposes and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was at the time and place the sum of one hundred and eighty dollars ($180), no part of which appears to have been paid.

III. The claim herein was never presented to any officer or department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no competent reason is adduced showing why the same was not earlier presented.

By the Court.

Filed February 25, 1908.
A true copy.
Test this 10th day of March, 1908.
[SEAL.]

John Randolph,
Assistant Clerk of Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 381.

TRUSTEES OF MOUNT OLIVE PRIMITIVE BAPTIST CHURCH, PHILIPPI, W. VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE MOUNT OLIVE PRIMITIVE BAPTIST CHURCH, OF PHILIPPI, W. VA., AGAINST THE UNITED STATES.

MARCH 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 11, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13008. Trustees of the Mount Olive Primitive Baptist Church, of Philippi, W. Va., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7111, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of the Mount Olive Primitive Baptist Church, of Philippi, West Virginia.'

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Mount Olive Primitive Baptist Church, of Philippi, West Virginia, the sum of one thousand two hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The trustees of said church appeared in this court March 23, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the building and grounds of the Mount Olive Primitive Baptist Church,

of Philippi, W. Va., consisting of a well-constructed frame church building about 46 by 35 feet in size, and occupied the same on several different occasions during the civil war as quarters, and as a result of such occupation the pews were taken out and spoiled and the pulpit injured, the fence consumed for fuel, and the property otherwise greatly damaged; that a claim was filed in the Quartermaster-General's Office for payment for injury to the property in 1866, but no payment therefor was ever made; that the reasonable rental value of said property, including the repairs necessary to restore it to the same condition as before said occupation, was the sum of $1,200, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the — day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants except the reports of the War and Treasury Departments relative to a claim for damages, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Mount Olive Primitive Baptist Church, of Philippi, W. Va., as a church was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, occupied the church building described in the petition and used the same at different times as quarters, and damaged the same. The reasonable rental value of said building, together with damages in excess of ordinary wear and tear, was the sum of two hundred and fifty dollars ($250), no part of which appears to have been paid.

III. A claim for damages in favor of the claimant church herein was referred by the Auditor for the Treasury Department to the Quartermaster-General on January 24, 1877, which claim was disallowed by that officer. Thereafter the claim herein for rent and damages was presented to the Fifty-ninth Congress, and on March 2, 1907, referred to this court by resolution of the United States Senate, as herein set forth in the statement of the case.

No satisfactory evidence is adduced showing why the claim was not earlier presented.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 10th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 382.

MISSIONARY BAPTIST CHURCH, ANTIOCH, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE MISSIONARY BAPTIST CHURCH, OF ANTIOCH, TENN., AGAINST THE UNITED STATES.

MARCH 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 11, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13140. The Missionary Baptist Church, of Antioch, Tenn., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 8506, Fifty-ninth Congress, second session.]

"A BILL For the relief of the Missionary Baptist Church, of Antioch, Davidson County, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Missionary Baptist Church, of Antioch, Davidson County, Tennessee, the sum of six hundred dollars, in full compensation for the occupation, use, and incidental injury to the property of said church by United States military forces during the civil war."

The trustees of said church appeared in this court March 23, 1907, and filed their petition in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the property of the Missionary Baptist Church, of Antioch, Tenn., consisting of a well-constructed brick building, about 60 by 40 feet in size, with basement, and occupied the same as quarters, and the seats, floor, and windows were

greatly injured and the property generally greatly damaged as a result of said occupation. A claim for $600 as damages was filed in the Quartermaster-General's office about 1867, but no payment or allowance was ever made; that the reasonable rental value of said property during such occupation, including the repairs necessary to restore said property to the same condition as before such occupation, was the sum of $600, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 25th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Missionary Baptist Church, of Antioch, Davidson County, Tenn., as a church was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church described in the petition and occupied the same at intervals from the spring of 1862 until the close of the war as quarters, and damaged the same. The reasonable rental value of said building, together with the damages in excess of ordinary wear and tear, was the sum of six hundred dollars ($600), no part of which appears to have been paid.

III. The foregoing claim was presented to the Quartermaster-General August 31, 1867, and was rejected on the ground that the majority of the congregation was not loyal. The claim was thereafter presented to the Fifty-ninth Congress and referred to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of this case.

No satisfactory evidence is adduced showing why the claim was not earlier presented to Congress.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 10th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 383.

SECRETARY AND TREASURER OF HARRISON MASONIC LODGE, NO. 122, BRANDENBURG, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE SECRETARY AND TREASURER OF HARRISON MASONIC LODGE, NO. 122, OF BRANDENBURG, KY., AGAINST THE UNITED STATES.

MARCH 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 11, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 18031. The Secretary and Treasurer of Harrison Masonic Lodge, No. 122, of Brandenburg, Ky., v. The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7209, Fifty-ninth Congress, second session.]

"A BILL For the relief of the secretary and treasurer of Harrison Masonic Lodge, Numbered One hundred and twenty-two, of Brandenburg, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the secretary and treasurer of Harrison Masonic Lodge, Numbered One hundred and twenty-two, of Brandenburg, Kentucky, the sum of five hundred dollars, in full compensation for the occupation, use, and incidental injury to the property of said lodge by United States military forces during the civil war."

The secretary and treasurer of said lodge appeared in this court March 23, 1907, and filed their petition, in which it is substantially averred:

That during the late civil war the military authorities of the United States took possession of the property of Harrison Masonic Lodge, No. 122, of Brandenburg, Ky.,

consisting of a well-constructed brick building of two stories, with 2 acres of land, inclosed by a high board fence, and occupied the same as quarters for a considerable period of time, and as a result of said occupation the fence was destroyed and the property otherwise much injured; that the reasonable rental value of said property during such occupation, including the repairs necessary to restore said property to the same condition as before such occupation, was the sum of $500, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 25th day of February, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by William H. Lamar, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Harrison Masonic Lodge, No. 122, of Brandenburg, Ky., as an organization was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the lodge building described in the petition and used and occupied the same for military purposes, and damaged the same. The reasonable rental value of said building, together with damages in excess of ordinary wear and tear, was, at the time and place, the sum of one hundred and twenty-five dollars ($125), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no competent evidence is adduced showing why the same was not earlier presented.

BY THE COURT.

Filed February 25, 1908.
A true copy.
Test this 10th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 384.

JAMES DAVISON.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF JAMES DAVISON AGAINST THE UNITED STATES.

MARCH 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 10, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact and opinion filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 10910. Decided March 9, 1908. James Davison *v.* The United States.]

STATEMENT OF CASE.

The following bill was referred to the court by resolution of the United States Senate on the 27th of June, 1904, under the act of March 3, 1887, known as the Tucker Act:

" [S. 1588, Fifty-seventh Congress, first session.]

"A BILL Conferring jurisdiction on the Court of Claims to try, adjudicate, and determine the claim of Brevet Captain (Second Lieutenant) James Davison, United States Army, retired.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the claim of Brevet Captain (Second Lieutenant) James Davison, United States Army, retired, for the balance of salary or pay earned by him during his military service and not paid, be, and the same is hereby, referred to the Court of Claims, with full jurisdiction to try, adjudicate, and determine said claim, and whereupon render judgment in claimant's favor for such amount as may be found just by said court without the interposition of any bar arising out of the existing statute of limitations. Right of appeal to the Supreme Court is expressly reserved to the Government and to the claimant."

The claimant appeared and filed his petition in this court, in which he makes the following allegations:

That he is a citizen of the United States residing in the State of New Jersey, who throughout his life has been loyal to the Government thereof, shows the court:

I. The petitioner served in the United States Army as an enlisted man from March 22, 1854, to October 30, 1862. He was appointed brevet second lieutenant, Third

United States Artillery, October 22, 1862, and was promoted to second lieutenant on the same date. He accepted this promotion and entered upon the discharge of his duty as such officer on October 30, 1862, and continued to discharge the duties of the office until January 13, 1864, when, with the rank of second lieutenant, he was retired on account of wounds received in the battle of Gettysburg, with the rank of second lieutenant, mounted, July 28, 1866, and with the rank of second lieutenant, not mounted, March 3, 1875. Subsequent to his retirement he served as a mustering officer in New York City in 1864; as mustering and disbursing officer at Brattleboro, Vt., in 1866; and as commissary of muster at Tallahassee, Fla., in 1866; was thereafter, in 1867, assigned to duty at headquarters for the second military district, Charleston, S. C., and in 1868 was assigned to duty in the third military district of Atlanta, Ga.

II. During the time the petitioner served as such commissioned officer in the Army of the United States the following statutory provisions were, respectively, in force:

"That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States." (Act of July 5, 1838, 5 Stat. L., sec. 15, p. 258.)

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years' 'service.'" (Act of July 15, 1870, now sec. 1262, Rev. Stat.)

III. The petitioner was paid for his services as a commissioned officer merely what other officers of his grade were paid, but was not allowed additional pay or additional rations or anything in commutation thereof on account of his length of service as an enlisted man in the Army of the United States, to his damage in the sum of $2,917.98, which amount is that stated by the Paymaster-General in report dated September 11, 1903, as the sum which would be still due him as longevity pay and rations but for the bar of the statute of limitations.

The case was brought to a hearing on its merits on the 7th day of December, 1904.

Messrs. Dudley & Michener appeared for the claimant, and the Attorney-General, by F. W. Collins, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States, having served as an enlisted man in the Army of the United States from March 22, 1854, to October 29, 1862, and as a second lieutenant in said Army from October 30, 1862, until January 13, 1864, when he was retired because of disabilities incurred in the service.

II. During the period of claimant's service as a commissioned officer in the Army of the United States the following statutory provisions respecting longevity pay were in force:

"That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States." (Act of July 5, 1838, 5 Stat. L., sec. 15, p. 258.)

"That in computing the length of service of any officer of the Army, in order to determine what allowance and payment of additional or longevity rations he is entitled to, there shall be taken into account and credited to such officer whatever time he may have actually served, whether continuously or at different periods, as a commissioned officer of the United States, either in the Regular Army or, since the nineteenth day of April, eighteen hundred and sixty-one, in the volunteer service, either under appointment or commission from the governor of a State or from the President of the United States." (Act of March 2, 1867, 14 Stat. L., 434.)

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank of pay, ten per centum of their current yearly pay for each term of five years of service." (Act of July 15, 1870, now sec. 1262, Rev. Stat.)

"SEC. 7. That on and after the passage of this act all officers of the Army of the United States who have served as officers in the volunteer forces during the war of the rebellion, or as enlisted men in the armies of the United States, regular or volunteer, shall be, and are hereby, credited with the full time they may have served as such officers and as such enlisted men in computing their service for longevity pay and retirement." (Act of June 18, 1878, 20 Stat. L., 150.)

III. The claimant has been paid the longevity rations and pay under the foregoing acts in accordance with the uniform construction of those acts by the War Department and the accounting officers of the Treasury from their respective dates, so long as said acts were in force and until superseded by the act of February 24, 1881 (21 Stat. L., 346). No claim for any additional allowance, or protest that payments were not in full, was ever made by the claimant until the year 1899, since which time the claimant contends that the act of 1878, supra, is retroactive, and upon that theory procured a statement from the Paymaster-General under date of September 11, 1903, which he asked the court to set forth in the findings, as follows:

Longevity record of James Davison, second lieutenant, retired.

Services as enlisted man from March 22, 1854, to October 21, 1862, eight years seven months.

Second lieutenant of artillery from October 22, 1862; retired January 14, 1864.

Entitled to mounted pay from July 28, 1866, to March 2, 1875, inclusive.

Paid as follows: First longevity, October 22, 1867; 20 per cent, October 22, 1872; 30 per cent, October 22, 1877; 40 per cent, June 18, 1878.

Entitled as follows: First longevity, October 22, 1862; second longevity, March 22, 1864; third longevity, March 22, 1869; 40 per cent, March 22, 1874.

Differences as follows:

1 ration a day, October 22, 1862, to March 21, 1864, 517 rations, 30 cents each	$155.10
2 rations a day, March 22, 1864, to October 21, 1867, 2,618 rations, 30 cents each	785.40
1 ration a day, October 22, 1867, to March 21, 1869, 517 rations, 30 cents each	155.10
2 rations a day, March 22, 1869, to July 14, 1870, 960 rations, 30 cents each	288.00
27 months, 7 days, at $21.65 per month (July 15, 1870, to October 21, 1872), being difference between pay second lieutenant, mounted and retired, with 10 per cent increase, and pay second lieutenant, mounted and retired, with 30 per cent increase	589.77
17 months, at $11.34 per month (October 22, 1872, to March 21, 1874), being difference between pay second lieutenant, mounted and retired, with 20 per cent increase, and pay second lieutenant, mounted and retired, with 30 per cent increase	192.84
43 months, at $17.81 per month (March 22, 1874, to October 21, 1877), being difference between pay second lieutenant, mounted and retired, with 20 per cent increase, and pay second lieutenant, mounted and retired, with 40 per cent increase	765.94
7 months, 26 days, at $6.47 per month (October 22, 1877, to June 17, 1878), being difference between pay second lieutenant, mounted and retired, with 30 per cent increase, and pay second lieutenant, mounted and retired, with 40 per cent increase	51.09
Total	2,983.24
Deduct tax on $215.70, at 3 per cent $6.47	
Deduct tax on $1,175.84, at 5 per cent 58.79	
	65.26
Balance due	2,917.98

If said act is to be construed as retroactive, then the above balance shown would be the correct amount due; but if not, then there is nothing due.

OPINION.

PER CURIAM:

The findings in the above-entitled cause were filed December 12, 1904, and certified to the President of the Senate pro tempore December 15, 1904. Thereafter, on June 28, 1906, the United States Senate passed the following resolution:

"Whereas on the fifteenth day of December, nineteen hundred and four, the Court of Claims made report to the President of the Senate pro tempore in the case of James Davison, brevet captain, United States Army, retired, consisting of a certified copy of the findings filed by the court in the aforesaid cause, which had been referred to said court by a resolution of the Senate of the United States under the act of March third, eighteen hundred and eighty-seven. The bill so referred by the said resolution of the Senate on the twenty-seventh day of June, nineteen hundred and four,

was S. 1588, Fifty-seventh Congress, first session, and related to the claim of James Davison, who was a brevet captain in the United States Army, retired, for longevity pay, in accordance with the act of June eighteenth, eighteen hundred and seventy-eight, twentieth Statutes at Large, page one hundred and fifty. An official copy of said report is embodied in Senate Document Numbered Fifty-eight, Fifty-eighth Congress, third session, which is hereto attached and made a part hereof. In concluding its finding the court said: 'If said act is to be considered as retroactive, then the above balance shown would be the correct amount due; but if not, then there is nothing due:' Therefore, be it

"*Resolved by the Senate of the United States*, That the said report of the said Court of Claims be referred to the said court, with directions to amend its said report by stating whether or not the said act of June eighteenth, eighteen hundred and seventy-eight, twentieth Statutes at Large, page one hundred and fifty, ought to be considered as retroactive for the purposes of this case and report at the next session of the Fifty-ninth Congress."

By the resolution the court is asked to amend the findings so certified "by stating whether or not the said act of June 18, 1878, 20 Stat. L., p. 150, ought to be considered as retroactive for the purposes of this case."

It will be observed that the court is asked to embody in the findings a question of law, i. e., whether or not the said act of June 18, 1878, is retroactive, while by section 14 of the act of March 3, 1887 (24 Stat. L., 505), under which the claim was referred, the court's jurisdiction is, in express terms, limited to the findings of fact. Under the reference, therefore, the act was satisfied when the court caused the findings so made to be certified to Congress.

There is no contention that the findings so certified were based on false or fraudulent testimony; and as the rereference of the claim is based alone on the action of the Senate by the resolution referred to independent of section 14 of the act of March 3, 1887, the court is without authority to amend the findings in conformity with the said resolution, and, therefore, the findings as originally made must stand.

But for the information of Congress we will say that on a like state of facts in the case of James Stuart under the special act of February 19, 1897 (29 Stat. L., 809), which operated to remove the bar of the statute of limitations as well as to confer upon the court jurisdiction to determine the claim, the court rendered a judgment in the claimant's favor, from which no appeal was taken.

It is ordered by the court that said findings as originally made be recertified to Congress together with a copy of this opinion.

BY THE COURT.

Filed March 9, 1908.
A true copy.
Test this 10th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 385.

JAMES BIGLER.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF JAMES BIGLER AGAINST THE UNITED STATES.

MARCH 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS,
Washington, D. C., March 11, 1908.

SIR: In compliance with the accompanying order of the court, I have to request the return of the findings in the case of James Bigler *v.* The United States, No. 10432, Congressional, which were certified to you under date of December 3, 1904.

Very respectfully,

JOHN RANDOLPH.
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11801. James Bigler *v.* The United States.]

ORDER.

Inasmuch as the claim in the above-entitled case, referred to the court in Senate bill No. 7278, March 3, 1905, is substantially the same as the claim referred in Senate bill No. 3583, March 7, 1901, under the act of March 3, 1887, under which latter reference the court heretofore made findings of fact and certified the same to the President of the Senate as No. 10432, Congressional, the court now, under said last reference, resumes jurisdiction of said case No. 10432, and orders that the two said causes be consolidated for consideration and determination together, to which end both cases are remanded to the trial calendar.

The clerk of the court is directed to advise the President of the Senate of the above action of the court and to request a return to it of the findings so certified to him in favor of said Bigler under date of December 3, 1904.

BY THE COURT.

Filed March 9, 1908.
A true copy.
Test this 11th day of March, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 386.

SCHOONER HAZARD.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF SCHOONER HAZARD, BARNABUS YOUNG, MASTER.

MARCH 12, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS,
Washington, D. C., March 10, 1908.

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the findings of fact and conclusions of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel schooner *Hazard*, Barnabus Young, master.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. French spoliations. Act of January 20, 1885, 23 Stat L., 283; Vol. I, Supp. R. S., 2d ed., 471. Vessel schooner *Hazard*, Barnabus Young, master.]

No. of case. Claimant.

312. Joshua D. Upton, administrator of Eben Parsons, *v.* The United States.

PRELIMINARY STATEMENT.

This case was tried before the Court of Claims on the 13th of February, 1908.

The claimant was represented by John W. Butterfield, esq., and the United States, defendants, by the Attorney-General, through his assistant in the Department of Justice, John W. Trainer, esq., with whom was Assistant Attorney-General John Q. Thompson.

FINDINGS OF FACT.

The court, upon the evidence, and after hearing the arguments and considering the same with the briefs of counsel on each side, determine the facts to be as follows:

I. The schooner *Hazard*, Barnabus Young, master, sailed on a commercial voyage on the 22d day of July, 1797, from Boston, bound to Aux Cayes. While peacefully pursuing said voyage she was seized on the high seas by the French privateer *La Tortue*, Captain Richard, and brought into the roadstead of Port de Paix, and there by the commissioner delegated by the French Republic in the Leeward Isles declared to be good prize, together with her cargo and all the appurtenances thereof, on September 8, 1797. The grounds of said condemnation were as follows:

That it appeared from the sea letter of the vessel that the master had received a written order from an English vessel to enter no French port.

That the said sea letter is not for the present voyage.

That instead of going to Guadaloupe, his destination, his route was false, having sailed direct from Boston to Martinique.

That Captain Young was in the habit of entering ports in rebellion against France and of concealing his true destination.

II. The *Hazard* was a duly registered vessel of the United States, of 47$\frac{83}{95}$ tons burden, belonging to the port of Boston, Mass., built in the year 1784, and was owned solely by Eben Parsons, a citizen of the United States.

III. The cargo of the *Hazard* at the time of capture consisted of codfish, beef, pork, butter, brandy, hoops, pipe, staves, flour, and salt, and was owned by said Eben Parsons, and was of the value of $5,260.59.

IV. The losses to said Eben Parsons by reason of said seizure and condemnation were as follows:

Value of vessel	$1,175.00
Freight earnings	783.00
Value of cargo	5,260.59
Total	7,218.59

The claimant has produced letters of administration on the estate of the party for whom he appears and has otherwise proved to the satisfaction of the court that the person for whose estates he has filed claims is in fact the same person who suffered loss by reason of the seizure and condemnation of the schooner *Hazard*, as set forth in the preceding findings.

Said claim was not embraced in the convention between the United States and the Republic of France concluded on the 30th of April, 1803. It was not a claim growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain concluded on the 22d day of February, 1819, and was not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimant, in his representative capacity, was the owner of said claim, which has never been assigned except as aforesaid.

CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic concluded on the 30th day of September, 1800; that said claim was relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimant is entitled to the following sums from the United States:

Joshua D. Upton, administrator of Eben Parsons, seven thousand two hundred and eighteen dollars and fifty-nine cents ($7,218.59).

Amounting in all to seven thousand two hundred and eighteen dollars and fifty-nine cents ($7,218.59).

BY THE COURT.

Filed March 9, 1908.
A true copy.
Test this 9th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 387.

REPORT UPON CHARGE THAT CERTAIN MEMBERS OF CHOCTAW-CHICKASAW COURT WERE BRIBED IN CONNECTION WITH CERTAIN DECISIONS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

SUBMITTING

A RESPONSE TO SENATE RESOLUTION OF MARCH 2, 1908, AS TO THE CHARGE THAT CERTAIN MEMBERS OF THE CHOCTAW-CHICKASAW COURT WERE BRIBED IN CONNECTION WITH CERTAIN DECISIONS RENDERED BY THEM.

MARCH 12, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 12, 1908.

SIR: By direction of the President, I submit this report upon the matter contained in the following Senate resolution of March 2, 1908:

> That the Secretary of the Interior be, and he is hereby, directed to inform the Senate what foundation, if any, there is for the charge which appears in the Congressional Record of February eleventh, nineteen hundred and eight, that certain members of the Choctaw-Chickasaw court were bribed in connection with certain decisions rendered by them, and to transmit to the Senate all correspondence, affidavits, evidence, papers, and all other information in his possession pertaining thereto; also to inform the Senate whether he has had in his possession, as alleged, certain evidence in connection with the case, and has ordered no investigation of the matter. * * *

A thorough examination of the files of the Secretary's Office and the Indian Office discloses no correspondence, affidavits, evidence, papers, or other information intimating or charging that members of the Choctaw-Chickasaw citizenship court were bribed in connection with certain decisions rendered by them.

The records show the following facts:

The citizenship court was created under the act of July 1, 1902. Its jurisdiction was continued by the act of March 3, 1903, and provision made for the completion of its work on December 31, 1904. The records of the Indian Office show that the court disposed of 256 cases

involving the rights of 3,487 applicants. The court completed its work and went out of existence in December, 1904, in accordance with the statute.

Early in 1903 the law firm of Mansfield, McMurray & Cornish submitted to this Department for approval a contract between it and the chief executives of the Choctaws and Chickasaws, under which contract the said firm of attorneys was to conduct litigation for these two nations in matters connected with citizenship cases. The contract provided that the compensation of the attorneys should be 9 per cent of the value of the shares of tribal property which such of said so-called "court claimants," as hereinafter defined, as may be refused allotment or distribution of tribal property would have received in the event of allotment or distribution thereof to them, whether for past or future services to this end, and for the purpose of fixing the value upon which to compute the compensation of said attorneys the value of an allotment was fixed at $4,800. On February 20, 1903, the Indian Office placed the following indorsement on the contract and forwarded it to the Secretary for consideration:

DEPARTMENT OF THE INTERIOR,
Washington, February 20, 1903.

The within contract is hereby approved, subject to the following conditions and modifications, to wit:

First. That the compensation of said attorneys shall be 5 per cent instead of 9 per cent, as provided in said contract.

Second. The total compensation to be paid said attorneys for services rendered and required, under said contract as herein modified, shall not exceed $250,000.

Third. That no part of said compensation shall be paid to said attorneys until the Choctaw and Chickasaw roll or rolls of all persons entitled to allotment or distribution of tribal property shall become final.

Fourth. The conditions and modifications subject to which this approval is given must be fully accepted on or before March 1, 1903, or this approval will be without effect.

W. A. JONES,
Commissioner of Indian Affairs.

On the same day it was approved in the following language:

Approved:

E. A. HITCHCOCK, *Secretary.*

Mansfield, McMurray & Cornish were required to accept in writing the modified approval of the contract. This they declined to do. Congress, by act of March 3, 1903 (32 Stat. L., 982), authorized the citizenship court to fix the compensation of said attorneys.

The compensation fixed by the court was $750,000.

Thereafter a suit was instituted in the supreme court of the District of Columbia by a member of one of the tribes for the purpose of enjoining the payment of the fee, but the court held that it had no jurisdiction in the matter. My predecessor, Secretary Hitchcock, objected to the payment of so large a fee, believing that the maximum amount fixed by him under the form of contract which he was willing to approve, namely, $250,000, was sufficient. He therefore submitted to the Attorney-General the question whether he was compelled to pay the amount fixed by the citizenship court. The Attorney-General on January 5, 1905, advised him that he was without authority either to refuse to issue the warrants for the amount fixed by the citizenship court or to delay the issuance of such warrants. Thereupon Secretary Hitchcock drew his warrant for the amount fixed by the court.

He had no alternative; the responsibility lies with Congress, which, by the act of March 3, 1903, upset the action of the Secretary, who, on the preceding February 20, had fixed the fee at just a third of the amount which the court, as authorized by Congress, actually did fix.

I understand that at and since the time of the payment of that fee there were rumors to the effect that attorneys representing claimants whose cases were set aside by the citizenship court alleged that the firm of Mansfield, McMurray & Cornish exerted undue or improper influence over the court.

During the summer of 1907 an attorney stated to an officer of this Department that he would offer evidence regarding these rumors, and he was urged to do so. By reference to a memorandum I find that in November this attorney brought before me a Mr. Rosenwinkle, who made statements regarding alleged improper conduct on the part of the members of the firm of Mansfield, McMurray & Cornish, and Judge Foote (deceased) and Judge Adams, of the citizenship court. He, however, declined to allow his name to be used, and refused to reduce to writing, sign, or in any way to substantiate his statements.

Mr. Rosenwinkle's statements were not different from the rumors to which I have above referred. As his statements were avowedly based merely upon conjecture and hearsay, I gave the matter no further consideration. He is now quoted in the public press as saying that "he had no knowledge of the truth or falsity of the charges."

I am, therefore, unable to inform the Senate what foundation, if any, there is for the charge of bribery against certain members of the Choctaw-Chickasaw court, which appeared in the Congressional Record of February 11, 1908. The records of this office disclose no foundation for it.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The PRESIDENT OF THE SENATE.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 388.

BRIEF IN MATTER OF PROPOSED TRANSFER TO SIDNEY BIEBER OF INTEREST OF UNITED STATES IN CERTAIN LAND IN WASHINGTON, D. C.

Mr. CARTER presented the following

BRIEF, PREPARED BY THE ATTORNEYS FOR THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, IN THE MATTER OF THE PROPOSED TRANSFER UNDER THE ACT OF CONGRESS APPROVED MARCH 2, 1907, TO SIDNEY BIEBER OF ALL THE INTEREST OF THE UNITED STATES IN CERTAIN LAND IN THE CITY OF WASHINGTON, DISTRICT OF COLUMBIA, AND THE CHANNEL OF THE ANACOSTIA RIVER.

MARCH 13, 1908.—Ordered to be printed with illustration.

In the War Department. In the matter of the proposed transfer under the act of Congress approved March 2, 1907 (Public No. 207), to Sidney Bieber of all the interest of the United States in the land lying between the south lines of squares 1131, south of 1117, and the squares south of squares 1123, 1148, and 1149 in the city of Washington, D. C., and the channel of the Anacostia River, containing, among other things, a succinct history of the construction of the Baltimore and Potomac Railroad Company on, and its continued occupation of, a portion of the land or space above indicated, with appropriate references to legislative enactments, executive documents, and judicial records bearing on such occupation.

[Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, attorneys for the Philadelphia, Baltimore and Washington Railroad Company, as the successor in interest of the Baltimore and Potomac Railroad Company.]

By an act of Congress approved March 19, 1904, (33 Stats., 143), the Secretary of War was authorized and directed to convey to Sidney Bieber, his heirs and assigns, "all the right, title, and interest of the United States in and to all of a certain square of land in the city of Washington, in the District of Columbia," stated in said act to be "known upon the plat or plan of said city as square numbered *eleven* hundred and thirty-one, upon the payment by the said Sidney Bieber into the Treasury of the United States of such sum of money as the said Secretary of War, upon consideration of all the circumstances, shall determine proper to be paid by the said Bieber for the said square."

Under the supposed authority of this act the Hon. Robert Shaw Oliver, Acting Secretary of War, by a deed dated the 26th day of July, 1904, and acknowledged by him the same day "to be his act and deed as Acting Secretary of War," in consideration of one thousand ($1,000), which sum, upon consideration of all the circumstances, "the Acting Secretary of War" had determined to be a proper sum to be paid by the said Sidney Bieber for said square, granted and conveyed "unto Sidney Bieber, his heirs and assigns, all the right, title, and interest of the United States in and to all of certain square of land in the city of Washington, in the District of Columbia, known upon the plat or plan of said city as square numbered *eleven*." (Records, Recorder of Deeds, D. C., Liber 2830, fol. 115 et seq.)

By subsequent act of Congress approved June 30, 1906 (34 Stats., 772), being section 21 of the act entitled "An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes," it was provided (p. 787):

> That the Secretary of War be, and he is hereby, authorized and directed to grant and convey unto Sidney Bieber and his heirs and assigns all the right, title, and interest of the United States in and to all of certain land in the city of Washington, in the District of Columbia, lying south of square eleven hundred and twenty-three, eleven hundred and forty-eight, and eleven hundred and forty-nine, conforming with the metes and bounds of square eleven hundred and thirty-one, and that part of square eleven hundred and seventeen situated between the north lines of Water and I streets, the east line of Eighteenth street, and the west line of Nineteenth street, when said streets are extended, upon the payment by the said Sidney Bieber into the Treasury of the United States of such sum of money as the said Secretary of War, upon consideration of all the circumstances, shall determine proper to be paid for the said squares; and the surveyor of the District of Columbia is hereby authorized and directed to mark out such areas, to record plats, and to designate the proper square numbers.

Under the supposed authority of this act the Hon. Robert Shaw Oliver, Acting Secretary of War, by a deed dated the 19th day of September, A. D. 1906, and acknowledged by him the same day as Acting Secretary of War, "in consideration of the sum of three thousand nine hundred and three dollars ($3,903)," which sum, "upon consideration of all the circumstances," "the Acting Secretary of War" had determined to be a proper sum to be paid by the said Sidney Bieber for the said land, granted and conveyed unto Sidney Bieber, his heirs and assigns, "all the right, title, and interest of the United States in and to all of those certain squares of land in the city of Washington, in the District of Columbia, lying south of square eleven hundred and twenty-three, eleven hundred and forty-eight, and eleven hundred and forty-nine, conforming with the metes and bounds of square eleven hundred and thirty-one, and in and to that part of square eleven hundred and seventeen situated between the north line of Water and I streets, the east line of Eighteenth street, and the west line of Nineteenth street, when said streets are extended." (Records, Recorder of Deeds, D. C., Liber 3022, fol. 435 et seq.)

By a further and still later act of Congress approved March 2, 1907 (Public No. 207), being section 13 of the act entitled

> An Act amending an act entitled "An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings," and for other purposes,

it was provided—

> That the Secretary of War be, and he is hereby, authorized and directed to convey to the purchaser from the United States of square eleven hundred and thirty-one, and the south part of square eleven hundred and seventeen, and the squares south of squares eleven hundred and twenty-three, eleven hundred and forty-eight, and eleven hundred and forty-nine, in the city of Washington, all the interest of the United States in the land lying south of the squares so purchased and between them and the channel of the Anacostia River, upon the payment by such purchaser into the Treasury of the United States of such sum of money as the said Secretary of War, upon consideration of all the circumstances, shall determine proper to be paid for the said land; and the surveyor of the District of Columbia is hereby authorized and directed to mark out such land and determine the areas and to record a plat thereof.

For reasons doubtless entirely satisfactory to the parties directly connected in and with the passage of this last piece of legislation, but not immediately apparent to the casual reader, the name of the person presumably intended to be immediately benefited thereby was carefully omitted from the law, and his identity is established only by the presumably less conspicuous reference to him as "the purchaser from the United States of square eleven hundred and thirty-one," etc.

As, however, it sufficiently appears from the acts of Congress of 1904 and 1906, above referred to, and the deeds executed by the honorable Acting Secretary of War upon the authority supposed to have been conferred upon him thereby, that the person referred to in the act of March 2, 1907, as "the purchaser from the United States of square eleven hundred and thirty-one," etc., was and is none other than Mr. Sidney Bieber, we will hereafter, as occasion in such connection may require, refer to him by name rather than by the descriptive phrase contained in the law, for that phrase, indeed, seems calculated rather to conceal than to reveal the object of the statute's beneficence.

By War Department Special Order No. 24, of May 31, 1907, a board of officers of the Corps of Engineers, United States Army, consisting of Col. Charles S. Bromwell, Commissioner of Public Buildings and Grounds; Maj. Spencer Cosby, in charge of the Washington Aqueduct, and Capt. Jay J. Morrow, Engineer Commissioner of the District of Columbia, were detailed to assemble at Washington, D. C., and "determine the compensation to be fixed for the transfer of the interests of the United States" in the land described in said section 13 of the act of March 2, 1907.

Whether the provisions of said section 13 of said act, confined as they are to directing the Secretary of War to convey all the interest of the United States in the land in question "upon the payment * * * of such sum of money as the said Secretary of War, upon consideration of all the circumstances, shall determine proper to be paid for said land," are broad enough to authorize or justify the appointment by that high official of a board of his subordinate officers "to determine the compensation to be fixed for the transfer of the interests of the United States" in said land—thus in effect, if not, indeed, in fact, delegating to others the performance of a duty which the statute specifically imposes upon him—we need not now pause to consider.

Assuming that, truly construed, the language of Special Order No. 24 intended nothing more than that the board in question should investigate and report the results of such investigations to the Secretary of War for his information, and so to aid him in determining

the amount proper to be paid for said land, and that such was the purpose, both of the Secretary of War and of the Chief of Engineers in constituting the board of officers in question, we beg leave to submit for the information and consideration primarily of said board, and ultimately, as it is hoped, of the Secretary of War himself, the following suggestions, which are believed to bear pertinently upon at least some of "the circumstances" which, according to the provisions of the act of March 2, 1907, are to be considered by the Secretary of War in determining the amount "proper to be paid for the said land."

While it is of course to be presumed that the Congress of the United States, in enacting the act of March 2, 1907, here under consideration, as well as when enacting the previous acts of 1904 and 1906, above referred to, was fully advertent to the situation to be effected by such legislation and the results that might reasonably be expected to flow therefrom, nevertheless for the convenience of the honorable Secretary of War, who must determine the amount "proper to be paid for the land," "upon consideration of all the circumstances," we beg leave to submit the following review of the documentary and legislative history of all the lands affected by the acts of Congress of 1904, 1906, and 1907 hereinbefore referred to, in so far as Mr. Bieber, the beneficiary of said acts, and the Philadelphia, Baltimore and Washington Railroad Company, which, as the successor in interest of the Baltimore and Potomac Railroad Company, occupies and uses for its purposes some portion of said land, and may be supposed in some measure at least as likely to be affected by any conveyance which may be made under said act of 1907, are concerned:

The land lying south of squares specified in section 13 of the act of March 2, 1907, and between said squares and the channel of the Anacostia River consists of a strip of combined land and land under water something in excess of sixteen hundred feet over all in length from east to west, and of varying width. It is understood that Mr. Bieber, though asserting the right to demand under the terms of the act of March 2, 1907, a deed which by its descriptive clause would convey to him the interest of the United States in and to the entire strip of both land and land under water, to the very channel of the Anacostia River, modestly refrains from demanding such a deed, and indicates that he will be entirely satisfied with a deed limited, so far as its calls on the river side are concerned, by the bulkhead line heretofore officially established by the Secretary of War.

In this aspect, the "land" to which Mr. Bieber asserts his right to a conveyance varies in width from practically nothing at or near the southwest corner of square south of square 1149 to upwards of 500 feet in the vicinity of square south of square 1117.

By far the major part of the land included within such boundary lines is now and for many years last past, under the authority of the Congress of the United States, has been occupied by the tracks of the Baltimore and Potomac Railroad Company and its successor in interest, the Philadelphia, Baltimore and Washington Railroad Company. Among such tracks are the main running tracks of the railroad company, constituting at present not only its only entrance into the city of Washington from the North for both passengers and freight,

but also constituting the sole all-rail connection via Washington between New York and the South.

Not only this, but the outer portion of said "land" between the railroad tracks and the channel of the Anacostia River constitutes a considerable proportion of the remaining available water front of the city of Washington, the development of which has long occupied the attention of the Commissioners of the District of Columbia and in the furtherance of a general scheme for which development the Congress of the United States has already expended more than $200,000, the work of such development in the vicinity of the navy-yard being in more or less active progress at the present time.

Among the "circumstances," then, which seemingly ought to be considered by the Secretary of War in determining the "proper amount" to be paid by Mr. Bieber for the "land" in question are:

1st. Mr. Bieber's own relation, if any, to this land.

2d. The relation of the railroad company, the present occupant of a portion thereof, thereto; and,

3d. Undoubtedly the most important of all, the relation of the public at large to, and its rights in, said "land."

First, as to the relation of Mr. Sidney Bieber to this "land," which necessarily involves the consideration of his relation to square 1131 and the four other squares of land designated as square south of 1117, square south of 1123, square 1148, and square 1149, in the city of Washington.

1. *With respect to his relation to square 1131.*

Early in the first session of the Fifty-seventh Congress Mr. Allen, of Maine, introduced a bill (H. R. 13791) to quitclaim all interest of the United States in and to square 1131, in the city of Washington, to Sidney Bieber, and the same was referred to the Committee on the District of Columbia (Cong. Rec., vol. 35, part 5, page 4358).

During the second session of the same Congress Mr. Jenkins, from said committee, reported said bill to the House with amendments, accompanied by a favorable recommendation. From this report (H. R. Report No. 2820, 57th Cong., 2d sess.) it appears that the amendments proposed by the committee consisted in the substitution of the Secretary of War in place of the Secretary of the Interior as the officer directed to make the proposed conveyance, and the "purpose of the legislation" was explained through the medium of a letter "from the beneficiary," which was printed in full in the report, and will be reprinted herein presently.

From this report of the committee it also appears that the bill had been referred to the then Secretary of War for report and recommendation, and had been by him returned with indorsements and a report from the Chief of Engineers, to which, together with certain inclosures therein referred to, attention was invited.

Among said inclosures was the following:

WASHINGTON, D. C., *October 30, 1899.*

SIR: I will thank you very much if you will cause me to be advised in whom title is vested to square No. 1131, in the city of Washington, D. C., as shown by the records of the War Department.

Very respectfully, SIDNEY BIEBER.

The SECRETARY OF WAR.

[First indorsement.]

OFFICE CHIEF OF ENGINEERS, U. S. ARMY,
November 1. 1899.

Respectfully referred to Col. Theo. A. Bingham, U. S. Army, in charge of public buildings and grounds, for report.

To be returned.

By command of Brigadier-General Wilson.

A. MACKENZIE,
Lieutenant-Colonel, Corps of Engineers.

[Second indorsement.]

OFFICE PUBLIC BUILDINGS AND GROUNDS,
Washington, November 3, 1899.

Respectfully returned to the Chief of Engineers, U. S. Army.

The records of this office do not show to whom title is vested in square No. 1131 in the city of Washington; in fact, record book "No. 10, division of squares, with the original proprietors 1791–1804" on file here contains the following entry between squares 1130 and 1132: "There is no square numbered 1131." In addition, the "Dermott map" (1797–98) and the "King plats" (1803) in this office do not show a square numbered 1131.

THEO. A. BINGHAM,
Colonel, U. S. Army, Major, Corps of Engineers.

OFFICE OF THE CHIEF OF ENGINEERS, U. S. ARMY,
Washington, November 4, 1899.

SIR: In reply to your letter of the 30th ultimo, addressed to the Secretary of War, asking to be advised in whom title is vested to square No. 1131, city of Washington, as shown by the records of the War Department, I beg to invite your attention to the following remarks on the subject by the officer in charge of public buildings and grounds:

"The records of this office do not show to whom title is vested in square No. 1131, in the city of Washington. In fact, record book No. 10, Division of squares, with the original proprietors, 1791–1804, on file here, contains the following entry between squares 1130 and 1132: 'There is no square numbered 1131.' In addition the 'Dermott map' (1797–98) and the 'King plats' (1803) in this office do not show a square numbered 1131."

Very respectfully, your obedient servant,

A. MACKENZIE,
Acting Chief of Engineers.

Mr. SIDNEY BIEBER,
509 Seventh street NW., Washington, D. C.

WASHINGTON, D. C., *November 8, 1899.*

SIR: I beg respectfully to acknowledge the receipt of your letter of the 4th instant (by the hand of the Chief of Engineers, U. S. Army) in reply to my request to be informed to whom title is vested in square No. 1131, in the city of Washington. You state that your records show "there is no square numbered 1131."

I hold a deed from the District of Columbia conveying this entire square to me, and the records of the tax office of the District of Columbia show that taxes have been paid on same since 1852. I inclose you copy of tax certificate.

In the earliest plat of the city, the Ellicott map, square 1131 is represented as lying immediately south of square 1130, with a street separating the two squares, and also a street separating 1131 from the Eastern Branch.

I will be very grateful if you will investigate this matter and inform me whether my deed from the District of Columbia makes me undisputed owner of the property in question, and if the deed is not sufficient what steps ought to be taken by me to perfect title.

Thanking you for your kindness, I am,

Very respectfully, SIDNEY BIEBER.

The SECRETARY OF WAR.

[First indorsement.]

OFFICE CHIEF OF ENGINEERS, U. S. ARMY,
November 9, 1899.

Respectfully referred to Col. Theo. A. Bingham, U. S. Army, in charge of public buildings and grounds, for remarks.

A. MACKENZIE,
Acting Chief of Engineers.

[Second indorsement.]

OFFICE PUBLIC BUILDINGS AND GROUNDS,
November 11, 1899.

Respectfully returned to the Chief of Engineers, U. S. Army, with report of this date.

THEO. A. BINGHAM,
Colonel, U. S. Army, Major, Corps of Engineers.

OFFICE OF PUBLIC BUILDINGS AND GROUNDS,
Washington, November 11, 1899.

GENERAL: I have the honor to return herewith letter of November 8 from Sidney Bieber to the Honorable Secretary of War, stating that he holds a deed from the District of Columbia to square 1131, which is shown on the "Ellicott map" to be south of square 1130, which letter was referred to me for remark from the office of the Chief of Engineers on November 9, and to report as follows:

The "Ellicott map" referred to by Mr. Bieber is a copy of the L'Enfant plan, which was engraved at Philadelphia in the year 1792, prior to the laying out of streets and squares of this city. When the surveying work was in progress a great many of the squares shown upon the said Philadelphia engraving were wholly omitted, and the numbers of many others changed in the map prepared during 1793–1795. This was done with the approval of President Washington. The engraved map of 1792 was not altered to conform to these changes; it shows square 1131 on the south side of H street, due south and opposite square 1130. This map is considered as obsolete.

The "Appropriation map," sometimes designated the "Dermott and tin-case map of the city of Washington," was prepared by direction of the Commissioners, dated June 15, 1795, and was approved by Presidents Washington, March 2, 1797, and Adams, July 3, 1798, by which Executive action it became the standard map of the city of Washington. It shows no squares on the south side of H street from Nineteenth street E. to the Eastern Branch, and of course none opposite square No. 1130. Moreover, there are 135 squares shown on this "Appropriation map" which have no existence whatever upon the engraved plan.

I do not find any record of a division between an original proprietor and the public for a square numbered 1131.

If Mr. Bieber holds a deed from the District of Columbia to such a square as he describes, it would seem that he should apply to the District Commissioners for security of title. Possibly such a square has been reclaimed from the bed of the Eastern Branch, but it is not understood how taxes can have been paid upon such a square since the year 1852.

So far as the records of this office show, there is no such square.

Very respectfully, your obedient servant,

THEO. A. BINGHAM,
Colonel, U. S. Army, Major, Corps of Engineers.

Brig. Gen. JOHN M. WILSON,
Chief of Engineers, U. S. Army, Washington, D. C.

OFFICE OF THE CHIEF OF ENGINEERS, U. S. ARMY,
Washington, November 14, 1899.

SIR: Referring to your letter of the 8th instant, addressed to the Secretary of War, regarding title to "square No. 1131, in the city of Washington," I beg to inclose for your information a copy of a further report on the subject by Colonel Bingham, the officer in charge of public buildings and grounds.

Very respectfully, your obedient servant,

A. MACKENZIE,
Acting Chief of Engineers.

Mr. SIDNEY BIEBER,
509 Seventh Street NW., Washington, D. C.

Here the matter appears to have rested so far as the War Department was concerned until about April 26, 1902, when the following further official correspondence on the subject transpired:

OFFICE OF PUBLIC BUILDINGS AND GROUNDS,
Washington, April 26, 1902.

GENERAL: I have the honor to return herewith Senate bill 5342, Fifty-seventh Congress, first session, "A bill to quitclaim all interest of the United States in and to square 1131 in the city of Washington, D. C., to Sidney Bieber," which was referred to me April 24, from the office of the Chief of Engineers for report.

There is no objection known to this office to the enactment of the legislation contemplated by the bill.

In this connection I deem it proper to state that the land records of this office do not show the existence of a square numbered 1131, and beg to refer to my reports of November 3, 1899, and to my report of November 11, 1899, upon the subject of this square.

Very respectfully, your obedient servant,

THEO. A. BINGHAM,
Colonel, U. S. Army, Major, Corps of Engineers.

Brig. Gen. G. L. GILLESPIE,
Chief of Engineers, U. S. Army, Washington, D. C.

OFFICE OF THE CHIEF OF ENGINEERS, U. S. ARMY,
Washington, May 24, 1902.

SIR: I have the honor to return herewith letter of the chairman of the House Committee on the District of Columbia dated May, 1902, inclosing, with request for the views of the War Department thereon, House bill 13791, Fifty-seventh Congress, first session, "A bill to quitclaim all interest of the United States of America in and to square 1131, in the city of Washington, D. C., to Sidney Bieber."

This bill is identical with Senate bill 5342, Fifty-seventh Congress, first session, in regard to which a report was submitted to the Secretary of War by the Chief of Engineers under date of April 30, 1902.

A copy of a report upon Senate bill 5342 by Col. T. A. Bingham, U. S. Army, in charge of public buildings and grounds, dated April 26, 1902, and of the previous correspondence upon the subject referred to therein, are submitted herewith. Colonel Bingham states that he knows of no objection to the enactment of the legislation therein proposed.

It is understood that Mr. Bieber holds a tax title to the property in question under a deed executed by the Commissioners of the District of Columbia on November 26, 1889, and that he has paid the taxes on the property to June 30, 1902.

As the records pertaining to public buildings and grounds in the District of Columbia are filed in the War Department, it is recommended that before its passage the bill be amended by striking out the words "Secretary of the In-

terior" and inserting in lieu thereof the words "Secretary of War," wherever the former occur. As thus amended no objection is seen to its passage.

Very respectfully, your obedient servant,

G. L. GILLESPIE,
Brig. Gen., Chief of Engineers, U. S. Army.

Hon. ELIHU ROOT,
Secretary of War.

WAR DEPARTMENT,
JUDGE-ADVOCATE-GENERAL'S OFFICE,
Washington, D. C., June 2, 1902.

Respectfully returned to the Secretary of War, inviting attention to within report of the Chief of Engineers.

I concur in the view that there is no objection to the passage of this bill when amended as suggested by the Chief of Engineers.

GEO. B. DAVIS,
Judge-Advocate-General.

WAR DEPARTMENT, *June 4, 1902.*

Respectfully returned to the chairman Committee on the District of Columbia, House of Representatives, inviting attention to the following remarks of the Judge-Advocate-General of the Army as to the accompanying report of the Chief of Engineers, dated May 24, ultimo, and inclosures therein referred to.

WM. CARY SANGER,
Acting Secretary of War.

The "letter from the beneficiary" explaining the purposes of the proposed legislation is as follows:

WASHINGTON, D. C., *December 4, 1902.*

DEAR SIR: I am in receipt of your letter stating that the Committee on the District of Columbia desires further information before acting on House bill 13791, entitled "A bill to quitclaim all interest of the United States of America in and to square 1131, in the city of Washington, D. C., to Sidney Bieber," and have the honor to make the following statement:

The report of the War Department is correct in the statement that square 1131 does not appear of record or on all the early maps of the city of Washington, as the square undoubtedly has been formed by accretions caused by the tide and dumping.

The real point in the matter is this: The square of ground is actually in existence, with no other eligible or prospective claimant than myself. So far as the District government is concerned, I am the lawful possessor of the ground in question, and my desire is to remove any cloud on the title that may exist by the action of the highest authority that can be given in such matters, the Congress of the United States. As the bill states, I will pay into the Treasury of the United States a sum which may be deemed proper and just for any interest the United States may hold.

However, the District of Columbia has borne square 1131 on its tax rolls since the year 1853, and the taxes since that date have been paid. For your further information I will state that I hold abstract of title covering this square, issued by the Washington Title Insurance Company, the first transfer having been made March 23, 1853, when *Joseph McCormick* deeded the same to Mary E. Sweetser, but the grantor appeared not to have any title of record at that time. Since then this property has been sold for taxes three or four times, but the interests of the parties to whom it was sold were transferred to my father, Samuel Bieber, years ago, and from him to me, so that I have a clear title; and there are no other claimants, except that the United States of America may claim an interest at some future time, based upon the fact that it has never transferred the title. In this connection I beg to quote a part of the opinion of the title company:

"The title to the land raised by accretion south of square 1130 is in the United States of America."

My purpose in asking Congress to pass the legislation is twofold—first, to remove from the title of square 1131 any cloud which may exist, or hereafter exist, by reason of any interest the United States may claim in the same; second, to correct the records of the Department, so that square 1131 will appear on the official records and map of the city of Washington.

The land consists of a frontage of 206 feet on H street between Twentieth and Twenty-first streets SE., and has in the past been largely covered by water. The tide, however, is rapidly receding, and the land is being made permanent by accretion. The square is assessed at $206, being $1 per front foot, which in my opinion is a fair valuation.

I do not believe it to be the purpose of the United States Government to claim any title in this square, and as the title is otherwise clearly vested in me, as shown by the abstract, I would feel deeply grateful if your committee would favorably report the bill to the House for its action.

Very truly, yours, SIDNEY BIEBER.

Hon. AMOS L. ALLEN,
House of Representatives.

The report of the Commissioners of the District of Columbia, to whom the bill was also referred for investigation, is as follows:

OFFICE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, April 30, 1902.

DEAR SIR: The Commissioners have received from your committee a copy of House bill 13791, "To quitclaim all interest of the United States of America in and to square 1131, in the city of Washington, D. C., to Sidney Bieber," with request for their report thereon. As this bill concerns the United States rather than the District of Columbia, the Commissioners have the honor to suggest its reference to the Secretary of the Interior or the Attorney-General.

The assessor reports the tax history of this lot as it appears upon his records as follows:

"This property first appears listed for taxation in the year 1853 in name of Mary E. Sweetzer, entered on the records 'in water,' but no evidence appears as to how she obtained title, if any.

"The whole square was sold at tax sale May 14, 1861, to James Fraser, and tax deed issued by the corporation of Washington to William C. Todd, July, 1863, the tax-sale certificate having been assigned to said Todd.

"The property was again sold at tax sale September, 1887, to L. B. Cushing, and a tax deed issued by the District of Columbia to Samuel Bieber, December 14, 1889, who also obtained a quitclaim deed from William C. Todd, dated March 28, 1889.

"The petitioner in this case, Sidney Bieber, acquired title by deed recorded April 18, 1902, from Samuel Bieber.

"There are no unpaid taxes or assessments against the property.

"The square is assessed by the front foot, having 206 feet front on Water street, at $1 per front foot, value $206, being about two-thirds covered by water."

Very respectfully,

HENRY B. F. MACFARLAND,
President of the Board of Commissioners of the District of Columbia.

Hon. J. W. BABCOCK,
Chairman Committee on the District of Columbia, House of Representatives.

Upon this record the bill on January 26, 1903, was called up in the House of Representatives by Mr. Babcock, and the following occurred:

After the bill and amendments recommended by the committee had been read by the Clerk—

Mr. BABCOCK. Mr. Speaker, I ask unanimous consent that this bill may be considered in the House as in Committee of the Whole.

The SPEAKER. The gentleman asks that the Committee of the Whole House on the state of the Union be discharged from the further consideration of this bill and that it be considered in the House as in Committee of the Whole. Without objection, this course will be pursued.

There was no objection.

The amendments recommended by the committee were agreed to.

The bill was ordered to be engrossed and read a third time; was read the third time, and passed. (Cong. Rec., 57th Cong., 2d sess., vol. 36, pt. 2, p. 1268.)

On the next succeeding day it was reported to the Senate and referred to the Committee on the District of Columbia. (*Ibid*, p. 1299.)

No further action appears to have been taken on that bill in the Senate during the Fifty-seventh Congress, and it failed to become a law.

In view of the fact that the Commissioners of the District of Columbia reported that—

> This property first appears listed for taxation in the year 1853 in name of Mary E. Sweetzer, entered on the records "in water," but no evidence appears as to how she obtained title, if any. * * *
>
> The property was again sold at tax sale September, 1887, to L. B. Cushing, and a tax deed issued by the District of Columbia to Samuel Bieber December 14, 1889, who also obtained a quitclaim deed from William C. Todd, dated March 28, 1889.
>
> The petitioner in this case, Sidney Bieber, acquired title by deed recorded April 18, 1902, from Samuel Bieber. * * *

And also that—

> The square is assessed by the front feet, having 206 feet front on *Water* street, at $1 per front foot, value $206, being about two-thirds covered by water.

it may not be amiss at this point to refer to the following letters and reports bearing upon the matter, the originals of which are in the possession of the undersigned:

On April 7, 1898, Mr. William A. Gordon, an attorney at law of Washington, D. C., representing Mr. Samuel Bieber, the father of the present claimant, Mr. Sidney Bieber, and his immediate predecessor in title, wrote to Col. Enoch Totten, then attorney and counsel in the District of Columbia of the Baltimore and Potomac Railroad Company, as follows:

WASHINGTON, D. C., *April 7, 1898.*

Col. ENOCH TOTTEN.

DEAR SIR: All of square 1131 is assessed in the name of Samuel Bieber on the books of the District of Columbia, and taxes on said square have been paid by Mr. Bieber and those through whom he claims since the year 1854. At the present time the Baltimore and Potomac Railroad Company occupies the square, or part thereof, with its main tracks.

No such square as 1131 appears on the records, and no assignment of the same was ever made by the Commissioners of the United States.

On the earliest map of the city (Ellicott's) this square is represented as lying south of square 1130, separated from said square by a street and from the Eastern Branch by another street.

On the McDermott map square 1131 does not appear, and square 1130 extends, without the intervention of a street, into the Eastern Branch.

On the King plats square 1131 is not represented, and a street separates square 1130 from the Eastern Branch.

In 1853 Joseph McCormick conveyed the square to Mary E. Sweetzer.

In 1863 the corporation of Washington conveyed to Wm. C. Todd, the same having been sold for taxes in the name of Mary E. Sweetzer.

In 1889 Wm. C. Todd conveyed to Samuel Bieber, and this title of Mr. Bieber was, I believe, supplemented by another tax deed from the District of Columbia.

I have given the above notes of title in order that you may understand the condition of the property. It is doubtful if such a square actually exists, and if it does there is no evidence that the title ever passed out of the United States; and it has been carried for many years, and is still carried, on the books of the District as an existing square, and taxes have been collected thereon for more than forty years.

Mr. Bieber purchased this lot in good faith from Mr. Todd, and has all the legal and equitable title there is to it. At the same time the company you represent enjoys the use of the property as a part of its main roadbed.

I am authorized to sell Mr. Bieber's interest in the square to your company for $2,000.

In offering the property to you I would say that I believe it will be to the best interest of your company to purchase, as it will make the possession to that extent more secure, and should the United States ever claim the land for the improvement of the Eastern Branch or otherwise, your company would have an unusually strong claim for compensation, and would undoubtedly be well paid.

Kindly give the matter consideration and report my offer to the company.

Yours truly,

WILLIAM A. GORDON.

The receipt of Mr. Gordon's letter resulted in the following correspondence:

APRIL 21, 1898.

Hon. MATTHEW TRIMBLE, *Assessor, etc.*

DEAR SIR: A claim has been made that the Baltimore and Potomac Railroad Company has laid its tracks on an alleged square, No. 1131, being north along the shore of the Eastern Branch from the Pennsylvania Avenue Bridge. It seems doubtful whether there ever was such a square laid out when the city of Washington was projected.

I desire, in order to enable me to thoroughly investigate this question, to know when the city of Washington first began to assess this supposed square and the value put upon the same. I should like to have also all subsequent assessments made thereon, either by the city of Washington or the District of Columbia, down to the present time, with the amount of each assessment.

I do not know how much of a task I am asking you to perform, but I am ready at any time to pay a fair compensation for the clerical labor necessary to obtain this information. I shall take pleasure in transmitting the amount of such expense if you will advise me as to the same.

Yours, very truly, ENOCH TOTTEN.

OFFICE OF THE ASSESSOR, DISTRICT OF COLUMBIA,

Washington, April 22, 1898.

Col. ENOCH TOTTEN.

DEAR SIR: In answer to your communication of the 21st instant, we find from an examination of our records that square 1131 was first assessed in 1854, in the name of Mary E. Sweetzer. Please find inclosed a copy of the transfers of this property; also a copy of our numerical books from 1854 to date, showing the assessments and the different owners.

Very truly, yours, MATTHEW TRIMBLE,
Assessor, D. C.

S. T. K.

OFFICE OF THE ASSESSOR, DISTRIC OF COLUMBIA,
Washington, April 22, 1898.

Copy of Numerical Books.

Square.	Lot.	Front feet.	Rate.		Value of land.	To whom assessed.	Year.
			Cents.				
1131	All		½			Mary E. Sweetzer	1854
1131	All		½		25	Mary E. Sweetzer	1859
1131	All		½		25	W. C. Todd	1864
1131	All		.01		50	W. C. Todd	1869
1131	All		1		50	Wm. C. Todd	1872-'3
1131	All		1		50	Wm. C. Todd	1876
1131	All		1		50	Wm. C. Todd	1879
1131	All		.005		50	Wm. C. Todd	1884
1131	All	205	1.00		205	Wm. C. Todd	1886-'87
1131	All	205	1.00		205	Wm. C. Todd	1889-'90
1131	All	205	1.00	Water.	205	Samuel Bieber	1893-'94
1131	All	205	1.00	Water.	205	Samuel Bieber	1896-'97

OFFICE OF THE ASSESSOR, DISTRICT OF COLUMBIA,
Washington, —— —, 189–.

Copy of Transfers.

Recorded March, 1853.

Sq. 1131—All	Joseph McCormick To Mary E. Sweetzer.	Dated Mch. 23, 1853.

July 18, 1863.

Sq. 1131—All	Corporation of Wash. To Wm. C. Todd.	
Sq. 1131—All	Wm. C. Todd To Samuel Bieber.	Recorded Mch. 28, 1889. Dated Mch. 28, 1889.
Sq. 1131—All	Comm'rs D. C. To Samuel Bieber.	Recorded Dec. 2, 1889. Dated Nov. 26, 1889.
Sq. 1131—All	Comm'rs D. C. To Samuel Bieber.	Recorded Dec. 14, 1889. Dated Dec. 13, 1889.

OFFICE OF THE SURVEYOR OF THE
DISTRICT OF COLUMBIA,
Washington, May 14, 1898.

ENOCH TOTTEN, Esq.,
Attorney Baltimore and Potomac Railroad Company, Washington, D. C.

DEAR SIR: Replying to your communication of the 11th instant, I beg to state I have made a critical examination of the records of this office for the record of square 1131 and failed to find a record thereof.

Incident to the examination aforesaid, I also made an examination of the "King" and "Dermott" maps and failed to find thereon anything that would indicate the existence of said square.

On the Ellicott map, however, square 1131 is shown thereon as lying immediately south of square 1130, and although square 1130 is shown on the records and maps heretofore referred to as being a parallelogram, it is platted on said map in an irregular shape.

In view of these facts, I am of the opinion there is no square as 1131. If you should conclude to have survey made to determine the location of the Baltimore and Potomac Railroad tracks with reference to the south line of square 1130, which, in my opinion, would furnish the necessary information, a fee of $25 will be charged.

Very respectfully,

HENRY B. LOOKER,
Surveyor, D. C.

MAY 16, 1898.

HENRY B. LOOKER, Esq., *Surveyor, D. C.*

DEAR SIR: I have your favor of Saturday last in relation to alleged square No. 1131. I wish you would have a survey and diagram made showing the location of the lines of the Baltimore and Potomac Railroad tracks with reference to the line of square 1130, or such other lines as may be apparent on the record.

I inclose you herewith my check for $25, being for the fees for the diagram and survey, as mentioned in your said letter.

Yours, truly,

ENOCH TOTTEN.

Square 1131, Washington—Bieber's Claim for Same.

MAY 5, 1898.

Mr. H. F. KENNEY, *General Superintendent.*

DEAR SIR: Answering yours of the 18th ultimo and returning herewith sundry correspondence relating to Mr. S. Bieber's offer to sell to this company square 1131, supposed to be located on the north shore of the Eastern Branch, in Washington.

As requested, I have had a survey and plan made showing the location of the square. Before doing so, however, application was made on our attorney, Mr. Totten, for certain information to enable us to determine this location. Reference was also had to the several official plans of the city.

The original plan, known as the "Embryo," was platted by Peter Charles L'Enfant, and on completion of same was replatted by Ellicott. At a subsequent date these plans were used by one Dermott for the preparation of an official plan defining the location of the several public reservations, and which plan was completed in 1798.

In 1803 one King completed the official plans of the city of Washington, plans which have since been considered as the official plans.

All of these plans practically agree, in so far as the general arrangement and designation of the streets are concerned, but the first two mentioned plans do not show any figured dimensions. The King plans, however, are complete in this latter respect. The second mentioned, or Ellicott, plan is the only one that shows or makes any reference whatever to the said square 1131. Furthermore, this square is not shown or alluded to in the registry books on file in the District surveyor's office.

Guided by the sole information derived from the Ellicott plan, a survey was made of the square in question, and platted in red on the accompanying tracing #4081, which shows in black lines the streets, avenues, etc., platted from the said official King plan.

Attention is directed to the fact that while the King and Dermott plans agree very closely in the matter of location and dimensions of streets and shore lines at and near the said square #1131, they do not show its location.

As you will observe by reference to the tracing, the said square is all under water at high tide, and nearly so at low tide, and that portion above water at low tide is wholly within the limits of the grounds inclosed as a part of the Congressional cemetery.

To summarize, the said square is not defined by measurements on any plan, nor is it shown on any of the official plans, and, furthermore, no portion of the said square comes nearer than 150 feet of our nearest track.

I also return supplemental correspondence which you sent me on the 3rd instant, and which appertains to this same question, and which seems to point to the further fact that Mr. Bieber will have a great deal of trouble to establish his claim to the square in question.

The present superintendent of the Congressional cemetery stated that Mr. Bieber had presented a claim to that portion of the square lying within the cemetery grounds, and had also presented similar claims to former superintendents, all of whom refused to pay the slightest attention thereto.

For your better information, I have had traced in the lower right-hand corner of the tracing, a copy of the Ellicott plan showing the location of the said square.

Respectfully, yours,

A. FELDPAUCHE,
Principal Assistant Engineer.

P. S.—Copies of all of the aforementioned plans are on file in this office.

(NOTE.—Copies of the plan, or "tracing," referred to the foregoing letter will be furnished hereafter.)

It is needless to say that Mr. Samuel Bieber's offer through Mr. Gordon to sell to the railroad company "all the legal and equitable title" which he possessed in and to the so-called square No. 1131 was firmly declined by Colonel Totten.

Returning once more to the legislative history of said so-called square 1131, we find that in the Fifty-eighth Congress, first session, Mr. Allen, of Maine, on November 9, 1903, again introduced the bill

(now H. R. 819) to quitclaim all interest of the United States in and to all of said square to Sidney Bieber, and the same was referred to the Committee on the District of Columbia. (Cong. Rec., vol. 37, pt. 1, p. 162.)

Subsequently Mr. Allen, from said committee, reported said bill back with an amendment and a favorable report (H. Rept. No. 43), and the bill went to the Private Calendar. (*Ibid.*, p. 392.)

The committee amendment inserted the word "directed" in place of the word "required," so as to make the bill read: "That the Secretary of War be, and he is hereby, authorized and directed to grant," etc.

With the exception of the following added sentence, viz:

This bill passed the House during the last Congress, but is was not acted upon in the Senate,

Mr. Allen's report (H. Rept. No. 43) was an identical reprint of House Report No. 2820, herein above set forth at length.

On January 18, 1904, Mr. Babcock having asked unanimous consent for the consideration of the bill as in Committee of the Whole, and the Clerk having read the bill and amendment, the following occurred (Cong. Rec., 58th Cong., 2d sess., vol. 38, pt. 1, p. 843):

The SPEAKER. The request is for unanimous consent to consider this bill in the House as in Committee of the Whole.

Mr. HEPBURN. Mr. Speaker, before consenting to that, I should like to hear an explanation of the bill.

Mr. BABCOCK. I will say to the gentleman from Iowa that this is a little bill in reference to the title to a certain square, which bill passed the House during the last session, but failed in the Senate. It is pretty thoroughly understood by several members, and only involves land of an entire valuation of about $200.

Mr. BAKER. May I ask the gentleman why the property is to be transferred?

Mr. BABCOCK. I am going to explain that.

The SPEAKER. Is there objection?

Mr. FITZGERALD. Mr. Speaker, has that bill been reported, and is it on the Calendar?

Mr. BABCOCK. It has been reported and has been on the Calendar for some time. Not only that, but it passed the House in the Fifty-seventh Congress.

The SPEAKER. Is there objection?

Mr. FITZGERALD. May I ask the gentleman upon what calendar?

The SPEAKER. On the Private Calendar.

Mr. BABCOCK. On the Private or Union Calendar.

The SPEAKER. The Chair hears no objection. The question is on the amendment.

Mr. BAKER. I will ask the gentleman to explain the purpose of the bill.

Mr. BABCOCK. Mr. Speaker, I will say to the gentleman that this bill is to remove the cloud on the title to some land south of square 1130 of the city of Washington that has never been platted or numbered, but is known as 1131. The United States never has asserted title or made any claim to it. Mr. Bieber, who has paid taxes on it and owns the tax titles covering twenty years or more, asks that authority be given the Secretary of War to fix the amount, in his opinion, equitable and proper to be paid the Government for any title it may have, when he (Bieber) will pay the amount determined upon and receive a quitclaim deed from the United States, which will settle the title. If the gentleman will take the report and read it, he will find the detailed information.

Mr. BAKER. I am afraid if I take time to read the report, the bill will pass before I can read it.

Mr. BABCOCK. If the gentleman will take the time to read the report, he will find all about it. The bill was thoroughly discussed on the floor in the last Congress before it was passed.

Mr. BAKER. As I understand the gentleman, the United States does not claim title to this property.

Mr. BABCOCK. They do not.

Mr. BAKER. They are not asked to transfer some property to which they have any claim?

Mr. BABCOCK. Oh, no.

Mr. BAKER. That is all I wish to know.

The question was taken; and the amendment was agreed to.

The bill as amended was ordered to be engrossed for a third reading; and being engrossed, it was accordingly read the third time, and passed.

On January 19, 1904, the bill as passed by the House was reported to the Senate and referred to the Committee on the District of Columbia. (*Ibid.*, p. 876.)

On February 23, 1904, Mr. Foraker, from said committee, reported the bill back without amendment and submitted a report thereon (S. Rept. 1032), said report being no more nor less than House Report No. 43, which had been adopted by the Senate committee.

On March 12, 1904, the bill was called up by Mr. Gallinger and, there being no objection, was reported by the Senate, as in Committee of the Whole, to the Senate without amendment or debate and, having been read the third time, was passed. (*Ibid.*, pt. 4, p. 3170.)

It was presented to the President of the United States for his approval March 16, 1904 (*ibid.*, p. 3368) and was by him approved and signed March 21, 1904. (*Ibid.*, p. 3470.)

Such is the legislative history of the so-called square 1131.

Without existence or even recognition on any map, plat, or plan of the city of Washington having official or legal sanction, appearing solely and only in a tentative way and in a fragmentary or fractional form upon a preliminary chart of the proposed city known as the "Embryo," which chart has never been accorded any authority and is now "obsolete;" listed on the books of the assessor of the District of Columbia solely by virtue of a fictitious conveyance from a grantor in whom no one now has the hardihood to assert that there ever was a shred or shadow of title to convey; more than two-thirds under water, and as delineated even on said "Embryo," separated from the Anacostia River by a street (Water street) and distant from the nearest track of the Baltimore and Potomac Railroad, as actually constructed in 1872, at least 150 feet; fronting but 206 feet on Water street, the transfer of title of the United States thereto to Mr. Bieber under said act of March 21, 1904, furnishes the true basis of Mr. Bieber's present claim of alleged right to more than 1,600 feet of the water front of the city of Washington, and to the adjacent land, the major portion of which was actually created by and came into the possession of the Baltimore and Potomac Railroad Company years before even Mr. Samuel Bieber asserted any title to any portion of said square 1131.

Upon this intervening land said railroad company was not only paying taxes at the time Mr. Samuel Bieber appeared upon the scene, but has continued regularly to pay taxes thereon to the collector of taxes of the District of Columbia ever since.

It will be more than interesting to follow somewhat closely, as we shall hereafter, the details of the scheme which by means of the possession and use made by Mr. Bieber of an invalid, if not indeed a fraudulent, so-called tax title and with the aid of a benign legislature the people of the District of Columbia and the public at large are about to be shorn of a large stretch of water front, every day becoming more needed and of greater value in the commercial life of said District.

In view of the importance to the people of the District of Columbia of the results of said legislation, the deliberations of both houses of Congress thereon is more than instructive.

This "little bill in reference to the title to a certain square," which was "pretty thoroughly understood by several members," and "only involved land of an entire valuation of about $200," to which land "the United States never has [had] asserted title or made any claim to," and which bill "was thoroughly discussed on the floor in the last Congress before it was passed," though in fact, according to the official report of the debates, there had not been a single word of debate on the floor concerning it, quickly became the keystone of the cunningly contrived scheme to acquire possession not only of square 1131, but also of the great stretch of water front and intervening lands exceeding in area square 1131 many times.

Let it be noted that in his letter of December 4, 1902, to Mr. Allen, Mr. Bieber purported to claim, by virtue of his alleged tax, a frontage of only "206 feet on H street between Twentieth and Twenty-first streets SE.," the land so fronting on H street having "in the past been largely covered by water," from which the tide "is rapidly receding" (as it still does twice daily), "and the land is being made permanent by accretion."

In his letter of November 8, 1899, to the Secretary of War, Mr. Bieber states that—

> In the earliest plat of the city, the Ellicott map, square 1131 is represented as lying immediately south of square 1130, with a street separating the two squares, *and also a street separating 1131 from the Eastern Branch.*

The "street" referred to by Mr. Bieber as separating square 1131 from the Eastern Branch was undoubtedly Water street, which is shown on the Ellicott or "Embryo" plat, and which street formed an important part of the scheme of L'Enfant and the founders of Washington.

Its importance to the United States and the public was amply demonstrated in the case of Morris *v.* The United States, 174 U. S., 196.

Let it also be noted that the act of 1904 directed the Secretary of War to convey to Sidney Bieber the right, title, and interest of the United States in and to "all of a certain square of land in the city of Washington, in the District of Columbia, *known upon the plat or plan of said city as square No. 1131*," and that no authority was conferred by said act or any other upon any person to project the lines of said square otherwise than as shown upon said plat or plan.

Let it also be remembered that the only plat or plan of the city which disclosed the lines of square 1131 is the Ellicott plat, which shows said square to be bounded on the south by a street separating it from the waters of the Anacostia River, and that, as shown by an actual survey made in 1898, the southernmost line of said square did not approach to the tracks of the Baltimore and Potomac Railroad Company at the nearest point by more than 150 feet, and the significance of the way in which this act of Congress and the grant made under it has been used will shortly become apparent.

An inspection of the Ellicott plan, or the "Embryo," on file in the

office of the Commissioner of Public Buildings and Grounds, and of the tracing or plan (No. 4081, B. & P. R. R. Co., 5-4-1898, showing the location of alleged square No. 1131) made to accompany the letter from Mr. Feldpauche to Superintendent Kenney, supra, will make all of this very plain. Notwithstanding the express direction of the statute to convey the right, title, and interest of the United States to the "certain square of land in the city of Washington" * * * "known upon the square or plan of said city as square No. 1131," which square, as above stated, appeared upon the so-called "Embryo" as a fractional or irregular square, the surveyor of the District of Columbia, from the plat prepared by him "in accordance with Public Act 385, section 321, approved June 30, 1906," to be presently referred to, appears to have extended the lines of said square as shown on the "Embryo" so as to form a true parallelogram fronting on H street 206 feet, and extending through the existing marsh and water southerly 285.33 feet, thus practically doubling the supposed area of said square as indicated on the "Embryo."

b. Thus stood the matter when, on June 25, 1906, Mr. Bartholdt, from the Committee on Public Buildings and Grounds, reported to the House of Representatives the bill (H. R. 20410) "To increase the limit of cost of certain public buildings," etc., the twentieth section of which, as stated by the report of the committee (H. R. Rept. No. 5011), "authorized the sale of certain real estate in the city of Washington, District of Columbia," said real estate being the squares subsequently designated as south of 1117, square 1124, square 1147, and square south of 1149.

The paragraph 20 of said bill became paragraph 21 of the act approved June 30, 1906, above referred to, whereby the Secretary of War was directed to grant and convey unto Sidney Bieber all the right, title, and interest of the United States in and to all of certain land in the city of Washington, in the District of Columbia, lying south of squares 1123, 1148, 1149, "*conforming with the metes and bounds of square 1131*," and that part of square 1117 situated, etc.

Acting upon the authority of this act, the surveyor of the District of Columbia prepared a plat of the lands to be conveyed to the said Bieber and submitted the same to the Commissioners of the District of Columbia for their action, and under date of October 10, 1906, the said surveyor was by the Commissioners of said District directed to admit said plat to record in his office. By reference to this plat it will appear that the distance between the extreme easternmost point of square south of 1117 and the southwest corner of square south of 1149 is 1,577.31 feet, of which extreme length 340 are embraced in the streets projected on said plan and separating the various squares as follows:

	Feet.
Nineteenth street	80
Twentieth street	100
Twenty-first street	80
Twenty-second street	80

With the exception of square south of 1117, the squares to be conveyed to Bieber are shown on this plat as true parallelograms conforming to the lines of square 1131 as projected by the surveyor of the District.

The grounds upon which it was thought by the Congress that such additional land lying both to the east and west of square 1131 should be conveyed to Mr. Bieber does not appear, nor does it appear that any of said lands now designated as square south of 1117, square 1124, square 1147, and square south of 1149 had at any time prior to the passage of said act of June 30, 1906, been listed for taxation or sold for taxes or transferred by the Commissioners of the District of Columbia to Mr. Bieber or to any other person or corporation, nor does it appear that Mr. Bieber at any time claimed any title or interest, legal or equitable, in or to any of said lands; but for some unknown and unexplained reason the Congress appears to have singled out Mr. Bieber from the population of the District, and indeed of the United States, to make him the special beneficiary of its bounty. An inspection of the blueprint copy of the plat No. 5649, P. B. & W. R. R. Co., Maryland Division, dated 11-5-'06, heretofore submitted, indicates that, conservatively speaking, at least seven-eighths of all the so-called "land" contained in the four squares directed to be conveyed to Bieber by said act of 1906 is subject to the ebb and flow of the daily tides in the Anacostia River. The waters which ebb and flow over the "lands" in question are kept from direct connection with the main body of the water in the Anacostia River only by the intervening lands upon which lie the tracks of the Philadelphia, Baltimore and Washington Railroad Company.

To the westward of the easternmost line of square south of square 1149, and *within the limits of said square* as projected by the surveyor of the District of Columbia, lies practically 200 feet of the railroad trestle bridge *crossing the open water or channel of the Anacostia* River, and the lines of squares 1147, and south of 1149, as so projected by the surveyor of the District of Columbia to conform "with the metes and bounds of square 1131," are made to extend over and include a considerable section of the main running tracks of the Philadelphia, Baltimore, and Washington Railroad Company, which, as will hereinafter appear, were actually constructed in and through the waters of said Anacostia River.

Neither the reports of the committees of Congress having the bill (H. R. 20410) in charge, nor the debates of Congress on said bill, nor the official files throw any light upon the many inquiries which naturally occur to anyone whose attention is directed to this legislation.

c. Having thus apparently without any good reason beneficently increased Mr. Bieber's holdings in the vicinity of the city's water front on the Anacostia River, seemingly without any request or demand from Mr. Bieber in such regard, and certainly without any claim of right on his part, the Congress of the United States next enacted the act of March 2, 1907 (Public No. 207), the thirteenth section of which directs the Secretary of War to convey to "the purchaser," etc. (meaning thereby Mr. Bieber), "all the interest of the United States in the land lying south of the squares" above designated and "between them and the channel of the Anacostia River."

This act is entitled "An act amending an act entitled 'An act to increase the limit of cost of certain public buildings,' etc., and for other purposes." The bill (H. R. 25758) was submitted to the House by Mr. Bartholdt, from the Committee on Public Buildings and

Grounds, on February 20, 1907, and committed to the Committee of the Whole House on the state of the Union. In the report (H. Rept. No. 8041) accompaning said bill, it is stated:

This bill is in the nature of "an omnibus correction bill" and merely corrects a number of errors which occurred in the public building act of the first session of the present congress.

This bill carries no authorization for the expenditure of any additional money.

On February 25, 1907, Mr. Bartholdt moved to suspend the rules and pass said bill, and, there being no objection, the bill was read by the clerk, when the following occurred:

Mr. BARTHOLDT. Mr. Speaker, this bill merely corrects a number or errors which occurred in the legislation had at the last session. It makes no appropriation, and all the changes provided for in this bill are to be made within the limits of cost heretofore fixed.

Mr. TAWNEY. Will the gentleman permit me?

Mr. WILLIAMS. What is the object of the bill?

Mr. BARTHOLDT. I will explain it to the gentleman.

Mr. TAWNEY. I want to ask the gentleman if there are any new constructions authorized in this bill?

Mr. BARTHOLDT. There is not one dollar's worth of new construction, nor is there a foot of ground authorized, but in some cases it was necessary to transfer from the appropriation made for the building to the appropriation made for the site because an additional small amount was necessary to procure the site which the people wanted.

Mr. MANN. Is the total cost of building and site in any case increased?

Mr. BARTHOLDT. Not in one single instance.

Mr. TAWNEY. I want to ask the gentleman another question. The first section of the bill is entirely new legislation. Now, do you apply it—I did not catch it as it was read—to the act passed June 20, 1906? It does not extend the authority of the Secretary over buildings hereafter to be constructed?

Mr. BARTHOLDT. No, sir; it applies merely to the legislation of last session.

Mr. TAWNEY. What changes this bill would authorize the Secretary of the Treasury to make in buildings now authorized must be made within the limits of cost fixed by the act of June 30, 1906.

Mr. BARTHOLDT. Exactly; the gentleman states it correctly.

Mr. CANDLER. Will the gentleman specifically mention the buildings which this affects?

Mr. BARTHOLDT. It will take about twenty minutes to read all the changes.

Mr. CANDLER. I think it is necessary.

Mr. BARTHOLDT. In further explanation, I want to say that the Attorney-General has recently rendered an opinion that where the Congress has appropriated for a specific building and it should become necessary to locate in that building a room, for instance, for the customs service or internal-revenue service or Weather Bureau, or whatever the service may be, such a change can not be made unless we pass this legislation.

Mr. WILLIAMS. Now, if the gentleman from Missouri will pardon me, I understand that as the law now is, if a certain amount of money is appropriated for a site, and a certain amount for building, and the site can be gotten cheaper or the site will cost more, thereby necessitating a difference in the proportion of the expenditure for the two things, that difference can not be met, and this bill will enable it to be met.

Mr. BARTHOLDT. That is it; exactly.

Mr. WILLIAMS. I understand, furthermore, if the building is for a post-office, for example, and it is desired to hold court in the building, without some such legislation as this that could not be done?

Mr. BARTHOLDT. It does not apply to courts. If Congress should authorize the holding of a court in a certain place where it had not been heretofore authorized, the amount heretofore fixed would not be sufficient to enable the Treasury Department to make a court-house out of it. So it does not apply to those cases.

Mr. CANDLER. Does it apply to the general appropriations for the post-office buildings throughout the country?

Mr. TAWNEY. Only those authorized by the act of June 30, 1906.

Mr. CANDLER. Is there anything in it with reference to Columbus, Miss.?

Mr. BARTHOLDT. No, sir. I ask for a vote.

The SPEAKER. The question is on suspending the rules and passing the bill as amended.

The question was taken; and in the opinion of the Chair, two-thirds having voted in favor thereof, the rules were suspended and the bill was passed. (Cong. Rec., 59th Cong., 2d sess., p. 3959, et seq.)

From which it appears that not one word was said in the debate concerning the proposed transfer of a large section of the water front of the city of Washington on the Anacostia River to Mr. Bieber. The bill, having been reported to the Senate, was referred to the Committee on Public Buildings and Grounds of that body, and on February 27, 1907, the following action of the Senate was had thereon:

Mr. SCOTT. I ask unanimous consent to submit a report from the Committee on Public Buildings and Grounds.

I report back without amendment the bill (H. R. 25758) amending an act entitled "An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes," and I submit a report thereon. The purpose of the bill is to correct errors that were made in the public buildings act of the first session of the present Congress. It is very important to pass the bill, owing to the fact that there has been a ruling of the Treasury Department that where a public building act provided for only a post-office no room can be occupied by the internal-revenue collector or for any other purpose except as a post-office.

Mr. KEAN. The bill has passed the House?

Mr. SCOTT. The bill has passed the House. It does not carry an appropriation, and it is very essential that it should be passed to-day or at the very earliest date before we adjourn. I ask unanimous consent for the consideration of the bill.

The VICE-PRESIDENT. Is there objection to the consideration of the bill reported by the Senator from West Virginia?

Mr. HALE. The Senate is proceeding under an order made by unanimous consent to consider unobjected bills on the Calendar.

The VICE-PRESIDENT. Objection is made, and the next bill on the Calendar will be announced.

LIMIT OF COST OF CERTAIN PUBLIC BUILDINGS.

The bill (H. R. 25758) amending an act entitled "An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes," and for other purposes, was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed. (Ibid., p. —.)

Again no reference was made to the proposed transfer of the city's water front to Mr. Bieber.

A careful inspection both of section 21 of the act of June 30, 1906, and of section 13 of the act of March 2, 1907, fails to disclose wherein lay the "error" in the former which it was intended to be corrected by the latter, nor is there a shred of explanation, documentary or otherwise, indicating the basis upon which any supposed "error" in the former act was or could be predicated. Up to the present time Mr. Bieber has failed to give utterance to any assertion or claim of right or interest, legal or equitable, in or to any of the squares covered by the act of June 30, 1906, or any of the lands within the description of the act of March 2, 1907.

So much for Mr. Bieber's personal relations to the "lands" now under consideration by the board of distinguished officers convened

to ascertain "the compensation to be fixed for the transfer of the interests of the United States therein" to Mr. Bieber.

If, not withstanding the foregoing, the Secretary of War should still conclude that he is unduly bound under the law, and particularly under the provisions of the act of March 2, 1907, to convey to Mr. Bieber the interest of the United States "in the squares lying south of the squares enumerated in said section 13 of the act of March 2, 1907, viz., square south of 1117, square south of 1123, square 1131, square 1148, and square south of 1149, and between them and the channel of the Anacostia River," it is respectfully submitted that such conveyance should not in anywise be predicated upon the map prepared by the surveyor of the District of Columbia, dated March 21, 1907, in accordance, as stated by him, with section 13 of the act of Congress approved March 2, 1907, etc., a copy of which is among the files pertaining to the present inquiry.

Said map shows the "land" to be conveyed in a solid block, containing within the bulkhead line 376,865 square feet, and makes no allowance whatever for the projection to the river of the streets, Nineteenth to Twenty-second, inclusive. It is plain that the "land" upon which said streets abut and which lies between their abutting ends and the river is not land between said squares and the channel of the river.

The inclusion in any conveyance to Mr. Bieber of the lands which would naturally form the projection of said streets toward the river would not only deprive the public of the use and benefit of the water front, but would also prevent at that point the free exercise of the right of access to the water itself.

In addition to the 376,865 square feet of land within the bulkhead line, said map also indicates the further area of 328,910 square feet of "land" lying south of the enumerated squares and between them and the established "wharf line" or channel of the Anacostia River, making in all a total surface area of upward of sixteen (16) acres in extent of water front, necessary for the use and future benefit of the people of Washington, the total interest of the United States in and to which the Secretary of War is directed by this unexplained legislation of Congress to convey to Mr. Sidney Bieber, who makes no claim of title thereto nor asserts special interest of any sort therein.

In determining the proper sum of money to be paid into the Treasury of the United States by Mr. Bieber for such unexampled favor, it is submitted that the foregoing "considerations" should be accorded grave attention, as well as also the further "consideration" that every foot of "land" lying south of the south line of square 1131, as projected by the surveyor of the District of Columbia, has been made by laborious and expensive "filling-in" operations carried on from time to time by the Baltimore and Potomac Railroad Company.

Second. As to the relation of the Baltimore and Potomac Railroad Company and its successor in interest, the Philadelphia, Baltimore and Washington Railroad Company, in the "lands" under consideration.

The Baltimore and Potomac Railroad Company was originally chartered by and incorporated under an act of the general assembly of the State of Maryland, approved May 6, 1853, entitled "An act to

incorporate the Baltimore and Potomac Railroad Company," the parts or portions of which of consequence here are as follows, viz:

Section 2 declares that certain subscribers to the capital stock of the Baltimore and Potomac Railroad Company shall be and "are hereby declared to be incorporated into a company by the name of the Baltimore and Potomac Railroad Company, and by that name shall have perpetual succession and be capable in law of purchasing, holding * * * and conveying estate, real, personal, and mixed, * * * and by said corporate name may sue and be sued * * * and shall have and enjoy and may exercise all the powers which other corporate bodies may lawfully do for the purposes named in this act."

* * * * * * *

SEC. 12. That the president and directors of the said company shall be, and they are hereby, invested with all the rights and powers necessary to the construction, working, use, and repair of a railroad from some suitable point in or near the city of Baltimore, and thence within one mile of the town of Upper Marlboro, in Prince George County, and as near to said town, within the limits of said distance, as may be practicable, and by or near the town of Port Tobacco, in Charles County, to a point on the Potomac River, to be selected by the president and directors of said company hereby incorporated, not higher up than Liverpool Point, and not lower down than the mouth of St. Marys River, with such branches at any point of said railroad, not exceeding 20 miles in length, as the said president and directors may determine. The said road, when completed, not to be more than 66 feet wide, except at or near its depots or stations, where the width may be made greater, with as many tracks as the president and directors may deem necessary; and the said president and directors may cause to be made, or may contract with others for making, said road or any part of it; and they, or their agents, or those with whom they may contract, or their agents, may enter upon and use and excavate any lands which may be wanted for the site of said road or the erection of warehouses or other works necessary for the said road or for its construction and repair; and that they may build bridges, fix scales and weights, lay rails, may take and use earth, gravel, stone, timber, or other materials which may be needed for the construction and repair of the said road or any of its works, and may make and construct all works whatever which may be necessary and expedient in order to the proper completion and maintenance of the said road; and they may make or cause to be made lateral railways in any direction whatever from the said railroad, and for the construction, repair, and maintenance thereof shall have all the rights and powers hereby given in order to the construction and repair of said principal railroad, and may also own and employ steamboats or other vessels to connect the said railroad or railroads with other points by water communication, provided nothing herein contained shall be construed to authorize the said company to take private property for their use without compensation. * * *

Section 13 provides for the acquisition by the said president and directors, or their agents, "of any land, earth, or materials, or any improvements which may be wanted for the construction or repair of any of said roads or any of their works," and if they can not agree with the owners thereof, then for condemnation proceedings.

Section 20 provides that the legislature may "alter, amend, or repeal this charter at its pleasure."

SEC. 22. That the president and directors of said company shall have full power and authority to connect the railroad which may be constructed under the provisions of this act with any other railroad now existing or which may hereafter be constructed, and also to make such contracts and arrangements with the president and directors of such railroads for the through transportation of passengers and merchandise and all property of what kind soever, in the cars or carriages of either company, as may appear to said president and directors convenient and advantageous. (Senate Ex. Doc. 220, Fifty-seventh Congress, second session, Federal and local legislation relating to canals and steam railroads in the District of Columbia, 1802–1903. G. P. O., 1903.)

By the preamble of an act of the Congress of the United States, entitled "An act to authorize the extension, construction, and use of a lateral branch of the Baltimore and Potomac Railroad into and within the District of Columbia," approved February 5, 1867 (14 Stats., 387), it was declared that it having been

represented to this present Congress that the Baltimore and Potomac Railroad Company, incorporated by an act of the general assembly of Maryland, entitled "An act to incorporate the Baltimore and Potomac Railroad Company," passed the sixth day of May, eighteen hundred and fifty-three, are desirous, under the powers which they claim to be vested in them by the provisions of the before-recited act, to construct a lateral branch from the said Baltimore and Potomac Railroad to the District of Columbia;

Thereupon it was enacted—

That the Baltimore and Potomac Railroad Company, incorporated by the said act of the general assembly of Maryland, shall be, and they are hereby authorized to extend into and within the District of Columbia, a lateral railroad, such as the said company shall construct or cause to be constructed, in a direction towards the said District, in connection with the railroad which they are about to locate and construct from the city of Baltimore to the Potomac River, in pursuance of their said act of incorporation, and the said Baltimore and Potomac Railroad Company are hereby authorized to exercise the same powers, rights and privileges, and shall be subject to the same restrictions in the extension and construction of the said lateral railroad into and within the said District, as they may exercise or are subject to, under and by intent of their said charter or act of incorporation, in the extension and construction of any railroad within the State of Maryland, and shall be entitled to the same rights, compensation, benefits and immunities, in the use of the said road, and in regard thereto, as are provided in their said charter, except the right to construct any lateral road or roads within the said District, from the said lateral branch or road hereby authorized, it being expressly understood that the said Baltimore and Potomac Railroad Company shall have power only to construct from the said Baltimore and Potomac Railroad, one lateral road within the said District to some point or terminus within the city and county of Washington, to be determined in the manner hereinafter mentioned.

SEC. 2. *And be it further enacted*, That before the Baltimore and Potomac Railroad Company aforesaid, shall proceed to construct any railroad which they may lay out or locate on, through or over any land or improvements, or to use or take for use any earth, stone or other materials necessary for the construction of said road, on any land within the said District, they shall first obtain the assent of the owner of such land, improvements or materials; or if such owner shall be absent from said District, or shall refuse to give such assent on such terms as the said company shall approve, or because of infancy, coverture, insanity or any other cause, shall be legally incapable of giving such assent, then it shall be lawful for the said company to apply to a justice of the peace of the county of Washington, who shall thereupon issue his warrant under his hand and seal directed to the marshal of the said District, requiring him to summon a jury of twenty citizens of the said District, * * * to proceed to value the damages which the owner or owners of any such land or other property will sustain by the use or occupation of the same required by the said company. * * *

SEC. 3. *And be it further enacted*, That * * * nothing herein contained shall be so construed as to authorize the entry by the said company upon any lot or square, or upon any part of any lot or square owned by the United States, within the limits of the city of Washington, for the purpose of locating or constructing the said road, or of excavating the same, or for the purpose of taking therefrom any materials, or for any other purpose or uses whatsoever; but the said company in passing into the District aforesaid, and constructing the said road within the same, shall enter the city of Washington at such place and shall pass along such public street or alley to such point or terminus within the said city, as may be allowed by Congress upon presentation of survey and map of proposed location of said road: *Provided*, That the level of said road within the said city shall conform to the present graduation of the streets, unless Congress shall authorize a different level.

SEC. 7. *And be it further enacted*, That unless the said company shall commence the said lateral road within two years, and complete the same with at least one set of tracks within four years from the passage of this act, then this act, and all rights and privileges thereby granted, shall cease and determine.

SEC. 8. *And be it further enacted*, That nothing herein contained shall be so construed as to prevent the Congress of the United States from * * * authorizing by any future law such additional railroads or roads in connection with said road, so as to extend the same road, or to construct others connected therewith to such parts of the District as from time to time may be required by the convenience of those parts of the District into which the said company are now restrained from carrying said road. * * * *And provided nevertheless*, that nothing herein contained shall be construed to give any rights or privileges to the said company beyond the District of Columbia; *And provided further*, That Congress shall have power to alter, amend, or repeal this act. (Sen. Ex. Doc. 220, *supra*, p. 66 *et seq.*)

It does not appear that any construction work within the District of Columbia was begun under the terms of this act prior to March 18, 1869, on which date a further act of the Congress, entitled "An Act supplementary to an act entitled 'An act to authorize the extension, construction and use of a lateral branch of the Baltimore and Potomac Railroad into and within the District of Columbia,' approved February 5th, 1867," was approved (16 Stats., p. 1).

By section 1 of said act of 1869 it was declared that the Baltimore and Potomac Railroad Company, "which, by the act of Congress entitled 'An act, etc.' "was authorized to extend into and construct within the District of Columbia the lateral branch of its road in said act of Congress mentioned, may enter the city of Washington with their said railroad, and construct the same within the limits of said city, on and by whichever one of the two routes herein designated, the said company may elect and determine upon; that is to say:"

* * * * * * *

Second. Beginning at some point on the northern shore of the Eastern Branch of the Potomac River, between south L and south M streets; thence westwardly between said streets to the intersection of Virginia avenue with south L and east Twelfth streets; thence along said Virginia avenue northwestwardly to south K street; * * *

The route thus described by the act of Congress and designated as "Second" was the route upon which the company elected and determined to construct its so-called lateral branch line within the city of Washington, and it is the route upon which the line was actually constructed and has ever since been operated.

It does not certainly appear from the records whether such designation of authorized routes by the Congress was made in accordance with a map or maps furnished by the company, but whether so or not, as was said by the Supreme Court of the United States, speaking through Mr. Justice Miller, in Commissioners of District of Columbia *v.* Baltimore and Potomac Railroad Company (114 U. S., 453, 459), when considering this very matter, "is wholly immaterial, as this supplementary statute was clearly made to *allow* the use of *these* streets as provided in section 3 of the original act."

By act of Congress of March 25, 1870 (16 Stats., 78), the Congress, after referring to the prior act of 1867 and reciting that "as the work on the line of the road within the city of Washington is very heavy, and will consume a long time in its construction, and * * * *has already been delayed in submitting the plans and location to Congress*

for their approval," extended the time limited in the original act for the completion of the road and authorized a further change in the line to be adopted " west of east Fourth street."

That the company did in fact prepare and submit for official action plans and profiles covering its entrance into and proposed route within the city of Washington is amply evidenced by the following resolution, approved May 31, 1870, of the board of aldermen and board of common council of the city of Washington, which body was charged with the management, repair, and control of the streets within the limits of said city:

Whereas a charter has been granted by the Senate and House of Representatives of the United States of America to the Baltimore and Potomac Railroad Company to construct their railroad to and within the city of Washington, District of Columbia, by act approved February 5, 1867;

And whereas they did further, by supplemental acts approved March 18, 1869, and March 25, 1870, grant to the said Baltimore and Potomac Railroad Company the option of two lines in the city of Washington, one by Virginia avenue, K street, etc., and the other by North Carolina and Virginia avenues, etc.; the said Baltimore and Potomac Railroad Company having now selected the Virginia avenue and K street route, do herewith make application to the mayor, board of aldermen, and board of common council of the city of Washington, for liberty to construct their railroad upon the Virginia avenue and K street route in conformity with the accompanying plat: Therefore

Be it resolved by the board of aldermen and board of common council of the city of Washington, That the Baltimore and Potomac Railroad Company be permitted to construct that portion of their railroad entering into and within the city of Washington, at a point on the northern shore of the Eastern Branch of the Potomac River, between south L and M streets, as set forth in the accompanying plans and profiles, thence running westwardly between said streets, to the intersection of Virginia avenue with south L and east Twelfth streets, thence along said Virginia avenue by a tunnel under the surface northwestwardly to south K street; thence along south K street westwardly to east Third street; thence by a line curving to the right to either the north or south bank of the canal northwestwardly to Virginia avenue; thence along Virginia avenue northwestwardly to the intersection of south C and west Ninth streets; and they are also permitted to change the grade of certain streets at certain points, as designated on said profiles and plan, so that the grades shall conform to the blue figures on said plan, and shall be so laid down upon the books in the city surveyor's office as the established grades:

Provided, however, That any street or avenue under which the said railroad may pass, shall be bridged or otherwise covered by the said company at their proper expense, and whenever sewers, gutters, curbstones or sidewalks, or flag footways, gas or water pipes, are disturbed or moved by the said company, the same shall be rebuilt in a proper and satisfactory manner, at the expense of the said railroad company, and without cost or loss to any citizen or to the corporation of Washington.

The original of the " plat " and " profiles " referred to in this resolution are on file in the office of the assistant engineer Philadelphia, Baltimore and Washington Railroad Company, Wilmington, Del., and copy thereof, which will be submitted for inspection on request, is in the possession of the undersigned. This " plan " and " profile," made prior to 1870, shows the line of construction of said railroad within the District of Columbia as then projected and afterwards actually constructed. It demonstrates beyond peradventure that every foot of the so-called " land " covered by the descriptive words of the act of March 2, 1907, was then covered by water averaging in depth from a few inches to 12 feet.

By act of June 21, 1870 (16 Stats., 161), entitled "An act supplementary to an act entitled 'An act to authorize the construction, extension, and use of a lateral branch of the Baltimore and Potomac

Railroad into and within the District of Columbia,' approved February fifth, eighteen hundred and sixty-seven," the Baltimore and Potomac Railroad Company was "authorized and empowered to extend their lateral branch, authorized by the act to which this is a supplement, and by former supplements to said acts, by the way of Maryland evenue, conforming to its grade, to the viaduct over the Potomac River, at the city of Washington, known as the Long Bridge, and to extend their tracks over said bridge, and connect with any railroads constructed, or that may hereafter be constructed, in the State of Virginia."

And by the act of March 3, 1871 (16 Stats., 585), again entitled "An act supplementary to 'An act to authorize the extension, construction, and use of a lateral branch of the Baltimore and Potomac Railroad Company into and within the District of Columbia,' approved February fifth, eighteen hundred and sixty-seven," the Baltimore and Potomac Railroad Company was authorized to erect over their tracks on Virginia avenue a passenger depot building.

The line of the Baltimore and Potomac Railroad from Baltimore to Washington was completed and opened for business July 2, 1872. It entered the District of Columbia through its northern boundary line east of the Anacostia River. Under its general authority "to build bridges" and "construct all works whatever necessary and expedient to the proper completion and maintenance of the said road," and in obedience to the mandate of Congress to enter the city of Washington "at some point on the northern shore of the Eastern Branch of the Potomac River, between south L and south M streets," the company purchased from the proprietors original square designated on the plats of the city as square south of square 1080, which square lay between south L and south M streets, and the southern or southeastern boundary line of which formed a portion of the north shore of the Eastern Branch of the Potomac River, and was at the time washed by the waters of said Eastern Branch, and constructed its road for a distance of upward of 3,900 feet on piling through the waters of said Eastern Branch or Anacostia River direct to its entrance into the city of Washington at and through square south of square 1080.

It is believed that there is not a single authentic map of the District of Columbia compiled prior to 1879 which indicates the existence at that date of a single foot of any of the land described in section 13 of the act of 1907, nor indeed does any such map disclose the existence prior to said date of any land outside of square south of square 1080 in the direction of the Eastern, or Anacostia, Branch and now occupied by the railroad company.

In this connection especial attention is invited to the map of the city of Washington, compiled with the assistance of the city surveyor, P. H. Donegan, by A. Basteret and J. Enthoffer, 1872.

Map of the roads in Washington County, D. C., B. D. Carpenter, surveyor, etc., 1870.

Map of the city of Washington for use of Engineer Commissioner, District of Columbia, 1883.

Atlas of fifteen miles around Washington, etc., compiled, drawn, and published from actual surveys, etc., by G. M. Hopkins, C. E., Philadelphia, 1879.

The King Plats, Plate XV, in office of Commissioner Public Buildings and Grounds.

Map of Washington, by A. Boschke, C. E., 1857.

Appendix A to this paper, containing the pleadings and exhibits in case of the United States against the Baltimore and Potomac Railroad Company, particularly the answer of the defendant company and Exhibits No. 1 and No. 2 annexed thereto.

Report of S. T. Abert, C. E., to Brig. Gen. Humphreys, Chief of Engineers, December 23, 1875 (H. R. Ex. Doc. 94, 44th Cong., 1st sess.).

Appendix J 3 to Annual Report of the Chief of Engineers for 1888, p. 795 et seq.

Appendix K 3 to Annual Report of the Chief of Engineers for 1889, p. 990 et seq.

Appendix K 2 to Annual Report of the Chief of Engineers for 1890, p. 1048 et seq.

In view of the foregoing extensive series of legislative enactments, each and every one of which reiterates the grant of authority from Congress to the Baltimore and Potomac Railroad Company "to extend into and within the District of Columbia" a railroad "in connection with the railroad which they are (were) about to locate and construct from the city of Baltimore to the Potomac River, in pursuance of their said act of incorporation," and in view of the specific provisions of the act of Congress of 1869 requiring said railroad company to "enter the city of Washington with their said railroad * * * at some point on the northern shore of the Eastern Branch of the Potomac River, between South L and South M streets," it would seem to be idle to question the right of said company to build its bridge through the waters of the Eastern Branch or Anacostia River from the southern shore thereof in the direction of the point prescribed for its entrance into the city of Washington. It is idle to suggest that a work of such magnitude as the construction of a standard gauge railroad track for approximately 4,000 feet through the waters of a so-called navigable stream in the immediate vicinity of the capital of the United States could be prosecuted "under cover" or "in the dark" and without full knowledge of the details of such construction being had by the municipal authorities charged with the supervision of such matters and also by the officers of that executive branch of the United States Government charged with the supervision of navigable waters and streams.

It is to be noted that no one of the acts of Congress prohibits the railroad company from entering upon or crossing over any lands of the United States within the District of Columbia other than lots or squares "*within the limits of the city of Washington*," and it is certain that the grant of authority and power "to build bridges" contained in the Maryland act of 1853, which is extended to the company in the construction of its proposed road within the District of Columbia by the express words of section 1 of the act of 1867 carries with it, at least by implication, the authority to build such bridges across streams navigable or nonnavigable as the case may be, including also across lands under water, subject only to the general prohibition of both statutes that before said company shall enter upon any lands of any *private* individual they shall agree with said individual

thereabouts, or in case of failure to agree, shall resort to the prescribed processes of condemnation.

It was impossible geographically and physically for the railroad company to build its lateral branch line "into and within the District of Columbia" "in connection with the railroad which it was about to construct in Maryland" and enter the city of Washington with said railroad at a point "on the northern shore of the Eastern Branch of the Potomac River between South L and South M streets" without at some point or other crossing the Eastern Branch or Anacostia River. The control of that stream rested solely in the agencies of the United States. That the purposes of said railroad company in such regard must have been well known at the very time amply appears from the public records of the District of Columbia. From the law dockets of the Supreme Court holding a district court, it appears, for instance, that by means of an inquisition (case No. 7346), held under the provisions of the acts of Congress of 1867 and 1869, supra, certain property belonging to John A. Smith and forming a portion of the southern shore of the Anacostia River was acquired by the Railroad Company for the purposes of constructing its line to said river, April 8, 1871; and so square south of 1080, the point of entrance of said company into the city of Washington on the northern shore of said river, was acquired for the purpose of said company by Thomas Seabrook by deed recorded April 10, 1872 (Recorder of Deeds, D. C., records, Liber 674, Folio 314), and transferred from said Seabrook to said Railroad Company by deed recorded March 5, 1874 (*id.* liber 742, folio 498).

Lots 4 and 5 in square 1067, immediately across Water street from square south of 1080, were acquired for the purposes of constructing the company's proposed line thereover by condemnation proceedings instituted July 30, 1870. (See Docket, Supreme Court D. C., District Court Cases No. 7319 and 7321.) Lot 4 in square 1048, immediately eastward of and adjacent to square 1067, was acquired from Samuel Armistead by condemnation proceedings instituted July 30, 1870 (Ibid. case No. 7328), and likewise was lot 2 in square 1024 (Ibid. case No. 7331). The title to the other pertinent lots in said squares were acquired by the railroad company or its agents by agreement with their owners by deeds bearing dates during the years 1870 to 1873, which deeds were duly recorded in the office of the recorder of deeds for the District of Columbia.

If the suggestion now made to the effect that the railroad company was without legal authority to cross the Anacostia River and enter the city of Washington in accordance with the plans actually employed by it in the construction of said line had any foundation in law or reason it is absurd to suppose that some one or other of the interested parties would not have raised such objection in the course of some one or other of the above adversary proceedings.

Apart from this, however, it appears that in January, 1876, the Congress was officially informed by the Secretary of War of the exact location and form of construction of the bridge or crossing of said railroad company across the Anacostia River. Neither the Secretary of War at that time nor the Congress itself made the slightest protest or raised the slightest objection to the continued occupation and use of said bridge or crossing trestle work, and the continued

acquiescence by the Congress and the legislative and municipal officers having to do with the matter in such occupation and use to the present time would seem to put an end to the various suggestions of doubts which have been made with seeming plausibility in recent years as to the right of the railroad company in the premises.

Under the provisions of the act of March 3, 1875, requiring an examination and survey of the Eastern Branch of the Potomac River from Bladensburg, Md., to the navy-yard in the District of Columbia, Mr. S. T. Abert, a United States civil engineer, was designated by Brig. Gen. A. A. Humphreys, Chief of Engineers, U. S. Army, to perform said work, and under date of December 23, 1875, Mr. Abert reported, among other things, as follows:

> Between the Anacostia bridge and the Baltimore and Potomac Railroad bridge the ruling depth (of the Eastern Branch) is 12 feet and the greatest depth 22 feet." * * * The Baltimore and Potomac Railroad crosses the river on a trestle bridge. Its course is very oblique, nineteen hundred feet of it being near the west bank; its total length is 3,966 feet. This bridge has no draw, but the span at the channel is one hundred feet, and is crossed by a Howe truss, the lower chord of which is 7.8 feet (in the clear) above low water. * * * The channel occupies the near or right or west bank; the flat on the left deepening from 2 feet at the upper bridge to 4 feet at the lower. The width of the river between banks is 1,340 feet." (See Appendix G, 10, Annual Report of the Chief of Engineers, 1876; reprinted as House Ex. Doc. 94, 44th Cong., 1st Sess.)

This report was officially communicated to Congress in January, 1876, as above stated.

An inspection of the blueprint plan and profile prepared by the railroad company some time prior to 1870, and submitted to the board of aldermen, etc., above referred to, shows that the depth of water along the line of said trestle piling or "bridge" from the south shore of the Anacostia River to the entrance of the railroad company upon square south of 1080, between South L and South M streets, varied from the depth of 1 foot near the south shore through a depth of 14 feet in the channel to a depth of a few inches on the flats in the vicinity of the uncompleted circle at the junction of Pennsylvania and Kentucky avenues. Said blueprint also shows by dotted lines the projection of the proposed railroad track in a straight line between the point of departure from the south shore and the point of entrance into the city of Washington on the north shore. The line so projected, when opposite the above-mentioned circle, is in immediate contact with the 10-foot contour line showing the depth of water in the channel at that point, and it would seem to be quite evident that the curved deflection in the line of the railroad tracks as originally constructed was made for the purpose of avoiding the increased difficulty and expense incident to "filling in" such a depth of water.

The right of the railroad company to continue its occupation and use of its line of tracks as originally constructed through the waters of the Eastern Branch to its entrance into the city of Washington at square south of 1080, does not appear to have been seriously questioned or contested until about the year 1887, when, by act of Congress approved February 23, 1887, an appropriation of $110,000 was provided for the construction of a substantial bridge "across the Eastern Branch of the Potomac River at the foot of Pennsylvania avenue southeast, in the District of Columbia."

In the Annual Report of the Chief of Engineers to the Secretary of War, which report was in turn duly submitted to Congress (Appendix J, 4, Annual Report of the Chief of Engineers, 1887, p. 911), in connection with the statement that "the Eastern Branch or Anacostia River is 1,560 feet wide at the site of the bridge" "measured at right angles to the general direction of the stream," it is also recited that "the main channel is 140 feet from the Washington shore or right bank of the river" and that the double track line of the Baltimore and Potomac Railroad passes along the Western shore, the grade on the line of Pennsylvania avenue being about 14 feet above low tide." * * * "The grade of the bridge is determined by two considerations, the crossing of the Baltimore and Potomac Railroad and the clear headroom and depth of truss required over the river."

In the report of Lieut. Col. Peter C. Haines, dated May 31, 1887, and accompanying the above report of the Chief of Engineers, the following appears (p. 915):

The Baltimore and Potomac Railroad Company contemplates some change in the alignment of their road. Should this change be made, the new line of road would be about 150 feet southeast of the old line, and at about the same grade. The question arises whether the expense of this crossing should not be borne in whole or in part by the railroad company." * * *

The intention of Congress appears to have been to provide for uninterrupted public travel on all streets and ways.

The fill made by the railroad company at the circle at the foot of Pennsylvania avenue southeast has reclaimed a part of the river, and the circle, which is the property of the United States, has been extended. Whether this circle is a public way and how far the charter of the company requires it to provide for public travel at this point, are questions of a legal character, which should be decided by the Secretary of War before the work of construction is begun. * * * The necessity of crossing the Baltimore and Potomac Railroad by an overgrade fixes the grade of the bridge at about 35 feet above low tide. This will leave a clear passageway, under the portion of the approach covering the railroad, of 18 feet.

In his annual report of July 6, 1888, to the Chief of Engineers, Lieut. Col. Peter C. Haines, referring to the bridge across the Eastern Branch of the Potomac River (Appendix J3, Annual Report, p. 795), states that the contract for the erection of said bridge had been let and that work under said contract was actually begun at the site October 19, 1887, but had been seriously interfered with and practically stopped by the employees of the Baltimore and Potomac Railroad Company, one of whom, Mr. Reed, stated, among other things (p. 796), "that the location of the abutment was not satisfactory to the railroad company and that it should have been located farther to the westward so that the railroad would have 33 feet on each side of its center line." To this objection Lieut. Col. Haines replied that—

It was supposed the railroad company would prefer to have the 66 feet measured as it had been measured, so that in putting down other tracks they could have them placed on the concave side of the curve where they had already begun the work of widening the embankment. *He (Mr. Reed)* was *informed that in case the company wished a greater width for its road no objection would be made to lengthening the through span if the railroad company would pay the extra cost.*

In December, 1887, the president of the Pennsylvania Railroad Company, in a communication to the Secretary of War, appears to

have stated (Ibid., p. 797) "that that company would assent to the construction of the abutment at the foot of Pennsylvania avenue on the site proposed *upon the condition that the two piers of the bridge next to this abutment shall be so located as not to interfere with the Baltimore and Potomac Railroad upon its original location at that point or with its full right of way of 66 feet.*" The *original location* here referred to being the "location" along the straight line as above indicated and not the location on the curved line upon which the road was in fact originally constructed.

The officials of the railroad company and the officers of the War Department not having been able to reach any agreement with respect to the continued construction of said bridge, in accordance with the original plans of the Department nor with respect to the details of proposed modifications therein and both parties continuing to stoutly assert their respective "rights" in the premises, legal proceedings were instituted by the United States in the Supreme Court of the District of Columbia to restrain the railroad company from interfering with the operations of the agents of the United States in their further works at such point, in which proceedings as will appear by reference to Appendix A hereto, the railroad company asserted its right not only to the continued occupation of its railroad tracks as originally constructed, but also its right to construct and maintain new or additional tracks along the line of its original location. While these proceedings were still pending the entire matter came before the Congress for its consideration and action, and resulted in the passage of an act of Congress approved May 14, 1888 (25 Stats., 138), which made an additional appropriation of $60,000 to cover the increased cost of constructing said bridge due to "alterations in the plan of the bridge across the Eastern Branch of the Potomac River at the foot of Pennsylvania avenue, East, as will best accommodate the traffic over and under said bridge" * * * and "*Provided, That the Baltimore and Potomac Railroad Company pay their fair and just proportion of the cost of said alteration at the west end of said bridge, to be determined by the Secretary of War.*"

When the bill (S. 2458) was under consideration in the Senate the following occurred:

The first amendment was in line 5, after the word "over," to strike out the word "or" and insert the word "and," so as to read:

"That the Secretary of War be, and he is hereby, authorized, in his discretion, to make such alterations in the plan of said bridge as will best accommodate the traffic over and under said bridge."

Mr. EDMUNDS. What does the phrase "and under" mean?

Mr. CAMERON. It refers to the railroad. The other amendments will explain it.

Mr. MCPHERSON. If the Senator from Vermont will permit me I will simply state that this bridge was authorized to be constructed in accordance with a certain plan within the limit of the appropriation, and the appropriation was something like $70,000 under the amount asked for by the board of engineers to build a suitable bridge. The appropriation the Department asked for was $172,000, and Congress only appropriated $100,000. They found that in the construction of the bridge they were required to build a very light structure, with very short spans, and after they began to construct the bridge they discovered that they were placing the piers of the bridge on the line that had been laid out by the Baltimore and Potomac Railroad, and that they were really occupying the territory belonging to the Baltimore and Potomac Railroad in its original plan for its road. Therefore there was a necessity for changing the plan of the bridge, and they got into a suit with the railroad people, and the whole con-

struction of it has been arrested owing to the action of the Baltimore and Potomac Railroad and the War Department.

The bridge itself will be entirely incomplete, entirely insufficient, as the board of engineers now avow, and they ask for an additional appropriation of money in order that retaining walls may be put up on the western end of the bridge to hold the embankment from going into the river, and also for making of increased strength the abutments and a longer span over the Baltimore and Potomac Railroad to enable them to straighten their road on the original line that they filed. *The road is not now laid upon the line that was originally filed, but owing* to the expense of the structure and the necessity of time in the completion of the road they have a very crooked road, and for the safety of the traveling public the road ought to be straightened, and in order to do this, to get rid of all these suits and to build a suitable bridge, one that will accommodate the traffic over the bridge as well as traffic under the bridge, it is proposed to make an additional appropriation of money and to build such a bridge as the board of engineers originally intended, and which could have been built with the appropriation they asked to have made.

Mr. EDMUNDS. I think I understand it now; but I should be glad to know whose land it is that this railway is now on, and whose land it is where the line was originally laid and where there is now no road, as I understand it, and which Congress is asked to expend more money to make more convenient for the purposes of the railroad.

If this is the railroad property which Congress is undertaking to pass with a new highway in the nature of a bridge, and therefore interfering with private property rights, then it would probably seem to follow that the public ought to pay the expense of it. If the railroad crosses property of the United States at that place, on the shore of the Eastern Branch, which it has not paid for and obtained by lawful ways, and it is necessary to have the span of the bridge there longer and more expensive in order to accommodate the traffic of the railroad, I submit with due humility that the railroad company ought to pay for it, and the bill ought to provide for it.

Mr. McPHERSON. An amendment provides for that.

Mr. CAMERON. If the Senator from Vermont will permit the further amendments of the committee to be stated he will find that the point he makes is provided for.

Mr. EDMUNDS. I shall be very glad to find that to be the case.

The PRESIDENT pro tempore. The question is on agreeing to the first amendment of the committee.

The amendment was agreed to.

The next amendment was, in line 6, before the word "thousand," to strike out "thirty" and insert "sixty;" so as to read:

"And for said purpose the sum of $60,000, or so much thereof as may be necessary, to be immediately available be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated."

The amendment was agreed to.

The next amendment was to add to the bill the following proviso:

"*Provided*, That the Baltimore and Potomac Railroad Company pay their fair and just proportion of the cost of said alteration at the west end of said bridge, to be determined by the Secretary of War."

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed. (Cong. Rec., 50th Cong., 1st sess., vol. 19, part 3, page 2429.)

In the furtherance of this legislation and in explanation of the bill (S. 2458) covering the same, Mr. Rowell, from the District of Columbia, on April 19, 1888, submitted a report (H. R. Report 1807, 50th Cong., 1st sess.), in which, among other things, it was stated:

After the construction of the bridge was begun it was discovered that the piers of the bridge were being placed on the land of the Baltimore and Potomac Railroad Company, and an injunction having been issued at the suit of the railroad company, work was arrested, and a further change of plan became necessary.

And when said bill was under discussion on the floor of the House of Representatives the following occurred:

Mr. MILLS. Does the bill make any appropriation?

Mr. HEMPHILL. The bill makes an appropriation of $60,000. The House will remember that last year we made an appropriation for a bridge over the Eastern Branch of the Potomac River. We appropriated a sum of money which at that time was thought to be sufficient. The Secretary of War has let out contracts under that act; but now it has become perfectly apparent that the sum appropriated is not sufficient to give the people there the bridge they want. *In addition to that the Baltimore and Potomac Railroad Company, by reason of the extension of the track which they are entitled to under the law, have a title to the land upon which this bridge as now planned will land; so that the public in crossing the bridge will run against the railroad. It is necessary to extend the bridge far enough over to allow the railroad to run under it. The Baltimore and Potomac Railroad Company have the right of way of, I think, 60 feet on each side of its track, and as the bridge is now planned people in crossing it will run right into the railroad track.* This bill proposes to give additional money to build a better bridge, so that people in crossing the bridge may go over the railroad track instead of running right into it.

The bill has passed the Senate, and has been unanimously reported by the House committee after a personal investigation by some of the members, if I recollect correctly.

It is provided that the Baltimore and Potomac Railroad Company shall pay their just proportion of the increased cost, and that the amount of their share shall be determined by the Secretary of War.

The reason why I ask unanimous consent of the House to pass the bill at this time is because I have a letter from the Secretary of War, received yesterday, stating that the construction of the bridge according to the present plan is now going on, and that it will cost from $500 to $1,000 each day if there is delay in changing the plan. (Cong. Rec., 50th Cong., 1st sess., vol. 19, p. 3577.)

Prior to the enactment of this act of May 14, 1888, expressly recognizing the right of the railroad company not only to be and remain where it was in the particular premises, but also its right to construct further tracks there, the Senate of the United States on March 1, 1888, had passed a resolution in the following form:

Whereas complaint is made of the delay in constructing the bridge across the Eastern Branch of the Potomac River, authorized by act of Congress approved February 25, 1887; Therefore,

Resolved, That the Secretary of War be, and he hereby is, directed to inform the Senate of the cause of the delay.

Pursuant to said resolution and the orders of the Chief of Engineers issued thereunder, Lieut. Col. Peter C. Haines, under date of March 5, 1888, made a detailed report "of the cause of the delay" in question and said report was before the Congress at the time of the enactment of said act of 1888. (Appendix J 3, to the Report of the Chief of Engineers for 1888, pp. 798 to 804, inclusive.)

This report of Lieut. Col. Haines, referring to the act of Congress of March 18, 1869, granting authority to the railroad company to enter the city of Washington by one of two specified routes, contains the following:

The contest with the railroad company arose from the claim of that company, after the plans had been approved and the contract made, to have a clear right of way 66 feet, measured 33 feet on each side of the center line betwen its two sets of tracks as now constructed. Mr. Carter, the superintendent of the railroad, in a letter to me dated July 12, 1887, bases his claim for 66 feet right of way on the act of Congress approved February 5, 1867, which states:

"The said Baltimore and Potomac Railroad Company are hereby authorized to exercise the same powers, rights, and privileges, and shall be subject to the same restrictions, in the extension and construction of the said lateral railroad into and within the said District, as they may exercise or are subject to, under

and by intent of their said charter or act of incorporation, in the extension and construction of any railroad within the State of Maryland."

The twelfth section of the act of incorporation in the State of Maryland says:

"The said road when completed not to be more than 66 feet wide, *except at or near its depots or stations, where the width may be made greater, with as many tracks as the president and directors may deem necessary.*"

Without admitting or denying the right of the railroad company to 66 feet right of way over a Government reservation, the plans of the bridge were made so as to give that space, because it could be done without materially affecting the cost of the structure. In doing so, however, the 66 feet were measured from the west abutment, which abutment was located 6 feet westward of the most westerly rail of the tracks, this being the distance usually allowed in such cases.

The Baltimore and Potomac Railroad Company enters the District of Columbia in virtue of certain acts of Congress passed in 1867 and 1869.

Section 3 of the act of February 5, 1867, provides: (Quoting it.)

I have not been able to find a copy of the survey referred to, but the present location does not seem to be in accord with the requirements of the act approved March 18, 1869, section 1 of which is as follows: (Quoting it.)

The *second* route, with some modifications, seems to be the one taken, but, instead of entering the city at the point referred to, the railroad enters the city considerably to the eastward, and crosses the circle at the foot of Pennsylvania avenue, from which circle the proposed bridge crossing the Eastern Branch starts. All the information I have been able to gather in relation to this matter tends to show that the railroad company originally had laid out a line different from the one now occupied; that the line it ought to occupy would enter the city near Fifteenth street east, and follow westerly between L and M streets southeast, to Virginia avenue, and that there is no authority of law for its occupancy of the circle at the foot of Pennsylvania avenue.

The suggestion that "the railroad enters the city considerably to the eastward, and crosses the circle at the foot of Pennsylvania avenue," was conceived in a mistaken understanding of the facts, for it can not well be doubted that at the date of the construction of those tracks in 1872 there was no "circle at the foot of Pennsylvania avenue," either in fact or on paper; that the tracks were in fact constructed in the water, and that the portion of the "circle" which was supposed to be occupied by said tracks did not have any existence, either on the plans of the city of Washington or in fact, but had been made by the operations of the railroad company itself or by dumpings made in that vicinity under the direction of the Commissioners of the District of Columbia. In this connection reference is made to the maps, plats, and plans of the city of Washington, above specified, and to the various affidavits and plans filed as exhibits to the answer of the Baltimore and Potomac Railroad Company in the litigation above referred to. (See Appendix A hereto.)

Lieutenant Colonel Haines also reported in the same report (p. 801):

On the 14th of December, 1887, G. B. Roberts, president Pennsylvania Railroad, addressed a communication to the honorable the Secretary of War, proposing—

"That if it meets with the approval of the Department, our company would assent to the abutment at the foot of Pennsylvania avenue being placed upon the site where it is now proposed to be located, upon condition that the two piers of the bridge next to this abutment shall be so located as not to interfere with the Baltimore and Potomac Railroad being constructed upon its original location at that point or with its full right of way of 66 feet, and also that the clearance between the top of the rail and the lowest portion of the bridge shall be at least 19 feet."

Reporting December 19, 1887, upon this communication Lieutenant-Colonel Haines said (ibid., p. 801) * * * :

"It is understood that in case the conditions are agreed to the railroad company will pay the extra expense of carrying the modifications into effect.

"No drawings are submitted with the letter of the president of the railroad company to show how the details of the proposed modifications are to be made, but on the 10th inst., *some of the officers of the railroad company showed me a tracing on which the proposed line of the railroad was indicated.* * * * The officers of the railroad company also exhibited a sketch showing how the proposed modifications could be effected by supporting the through span on iron posts, which posts would rest on low piers. There are serious objections to this plan. The bottom of the river at this point is very soft to a depth of 25 to 30 feet. * * * So far as the Government is concerned, it is decidedly better that the railroad tracks remain where they are, on hard ground. Any modifications in the plans designed to give the railroad company better facilities for its tracks should be of such a nature that the Government would get as good a bridge as it will without these modifications.

* * * * * * *

"In view of all the circumstances, I recommend that the modifications proposed be not agreed to.

"In order, however, that the railroad company may straighten its tracks and get on its 'original location,' I would recommend the following modifications, which will accomplish that purpose and give the Government a bridge which will be free from the objectionable features of the modifications suggested by the president of the railroad company: Build the west abutment to the eastward," etc.

Referring to a conference between Lieutenant-Colonel Haines and Mr. Du Barry, third vice-president of the Pennsylvania Railroad Company, held on January 10, 1888, the former reports that—

Mr. Du Barry admitted that the railroad as now (then) constructed is not on the line on which it was originally intended to be; that the road was built under his direction, and that it became necessary to skirt along the west shore of the Eastern Branch in order to avoid the treacherous soil to be passed over in a straight line (ibid., p. 803).

On January 11, Mr. Du Barry wrote to the Chief of Engineers that—

"After carefully considering the question with the maps before me, I now make the following propositions:

"(1) The location of the abutment and piers on the Washington side of the stream to remain as originally designed.

"(2) That the second span be a through span, instead of a deck, to be placed on iron columns, with 18 feet clearance above rail, as designed for the stream end of the first span.

"(3) The actual difference in cost between the deck span, as originally planned, and the through span, as now proposed, shall be borne by the railroad company. * * *.

Although the plan thus proposed by Mr. Du Barry was opposed by Lieutenant-Colonel Haines, nevertheless, with modifications in a few unimportant details, it was the plan finally adopted and the one upon which the bridge was actually constructed.

Colonel Haines concluded his above report as follows:

It will be seen from the foregoing correspondence that the controversy with the railroad company, which is the chief source of delay, began with reference to the manner of measuring a right of way 66 feet for the railroad tracks. This has now changed. The officers of the company admit that the tracks are not where they ought to be, and the question is, how can the railroad company get on the proper line?

* * * Work is now progressing on some parts of the bridge. Nothing can be done on the west abutment, however, until the court determines that the railroad company shall be restrained from interfering with the work.

With this report, among others, before it the Congress passed, and the President approved, the act of May 14, 1888, by which the respective rights of the public and of the railroad company in the premises were reasonably adjusted and the erection of the bridge was continued

under a modified plan which provided for the continued occupation and use by the railroad company of its tracks as originally constructed and for additional tracks to be laid down thereafter along the line of its "original location."

In the report of Lieut. Col. Peter C. Haines (Annual Report, Chief of Engineers, 1899, Appendix K3, p. 991), he said, among other things:

> In May, 1888, Congress passed an act to enable the Secretary of War to make such alterations in the plan of the bridge as would best accommodate the traffic over and under it, at the time providing that the Baltimore and Potomac Railroad Company pay its fair and just proportion of the cost of said alterations at the west end of said bridge, to be determined by the Secretary of War (act approved May 14, 1888). To accommodate the railroad company by *allowing it to retain its existing location and move out on the lawful one when it gets ready, necessitated an entire change in the plans of about four hundred feet of the westerly end of the bridge.*

Accompanying this report is a plan of said bridge showing two through spans and the location of the then existing tracks under the shore end of the first through span and the place of the proposed erection of the additional tracks on trestles in the water and mud, under the second of said through spans.

Under date of February 18, 1889 (ibid., p. 992), the Secretary of War notified the Baltimore and Potomac Railroad Company that such alterations in the plan of said bridge originally adopted under the provisions of the act of February 23, 1887, had been made as would "in his judgment best accommodate the traffic over and under said bridge, and has determined that the fair and just proportion of the cost of making said alterations at the west end of said bridge, to be borne by the said company, amounts to the sum of $20,000."

The said company is accordingly hereby notified and requested to pay over to the Treasurer of the United States, or to any depositary of the public moneys of the United States, the sum of $20,000 so as aforesaid determined to be its fair and just proportion of the cost of said alterations at the west end of said bridge.

In accordance with this notification, the Baltimore and Potomac Railroad Company deposited with Lewis R. Walters, assistant treasurer of the United States at Philadelphia, the said sum of $20,000, and the receipt thereof was duly acknowledged by Hon. L. A. Grant, Acting Secretary of War, on August 21, 1890.

In this connection reference is also made to the report of Lieut. Col. Peter C. Haines of July 1, 1890. (Appendix K to the Report of the Chief of Engineers for 1880, p. 1048 et seq.)

In view of the foregoing reports, legislative action and the monetary transaction between the United States and the railroad company had pursuant thereto, it would seem that there should be no longer any doubt of the right of the railroad company to its continued use and occupation of both of the lines of railroad track above referred to, and this claim of right is intended to extend to and cover the continued use and occupation of the lands now existing and lying between said lines of track, which lands exist as such merely by the labors and expenditures of said railroad company.

The construction of the new and additional lines of track provided for by the above arrangement, fully sanctioned as it was by the act of May 14, 1888, was begun in the year 1889 and completed in the

year 1892, since when they, together with the lines of tract originally constructed, have been in daily open and notorious use. In the space now occupied by each of said lines of track formerly flowed the waters of the Anacostia River.

The land upon which said tracks rest was laboriously made at the pains and sole expense of the Baltimore and Potomac Railroad Company, assisted in a slight measure by occasional dumpings by others and the forces of nature. And so, too, with the land lying between said main running tracks and now used by the company for spurs or siding. That land was also made by said company and prepared for its own use at its own expense.

It is to be borne in mind that both the engineers' office and the Congress contemplated the measurement of the 66 feet right of way southeastwardly from the outer or most westerly rail of the line of tracks as originally constructed. It is also to be borne in mind that in enacting the act of May 14, 1888, the Congress placed no restrictions upon the company in this regard, although its attention had been specifically directed to the fact that under the provisions of its Maryland charter, which by the express terms of the act of 1867 were made effective in the District of Columbia, the limitation of 66 feet in the width of the company's right of way did not apply "at or near its depots or stations," where it was expressly declared that "the width may be made greater, with as many tracks as the president and directors may deem necessary."

The tracks here under consideration are on the outskirts of the city of Washington "near" not only to the company's station or depot at the navy-yard, but also near to its main station or terminal in the city of Washington, and where, as is manifest, more than one set or pair of tracks would speedily become necessary for the handling of the company's business.

Upon every mile of both lines of main tracks and upon every mile of said intermediate spurs or sidings the Baltimore and Potomac Railroad Company and its successors in interest have regularly and from the moment of construction paid taxes to the District of Columbia. The amount of such taxes has been based upon accurate returns showing the entire quantity of track owned by the company within the District of Columbia, including the main tracks and spurs or sidings upon the land here in question.

No one in interest has ever doubted the duty or denied the obligation of said company to pay taxes upon every foot of each of said tracks.

In 1895 the company's trackage in the District of Columbia, upon all of which taxes were paid, consisted of the following:

6.7 miles of double track.
.4 mile of single track.
16.3 miles of sidings.

In 1897 such trackage had increased, so far as sidings are concerned, to 25.5 miles, at which figure, approximately, it has remained ever since.

Upon such combined main tracks and sidings the company has through a long series of years paid annually to the District of Columbia from $1,600 to $1,800.

That the Congress of the United States had no intention of interfering with the then existing condition of affairs so far as the location and use of the tracks of the Baltimore and Potomac Railroad Company within the District, but outside of the city of Washington, is concerned is amply demonstrated by the provisions of the act of Congress of February 12, 1901 (31 Stats., 767), which, though it required and provided in detail for the extensive and enormously expensive revision, change and improvement in alignment and grade of its railroad, and the complete relocation of parts thereof "within the city of Washington," made no requirement whatever in such regard with respect to the then existing lines outside "of the city of Washington." Said act in effect, if not in fact, confirmed the then existing state of affairs as worked out under the former acts above specified by providing for the beginning of the new work "at a point in its present tunnel under Virginia avenue, near the intersection of Eleventh street southeast;" and the act of February 28, 1903 (32 Stats., 909), providing "a union railroad station in the District of Columbia," while it authorized a connection with the company's then existing tracks on Virginia avenue, through the B street tunnel, with the union station, provided that except under certain specified conditions said connection should not be used for freight purposes; thus plainly indicating that the continued maintenance and use of the then existing lines, including the stretch of track across the Anacostia River, for such purpose was to be assumed.

So much for the relation of the Baltimore and Potomac Railroad Company and its successor in interest (31 Stats., 767; 32 Stats., 909), the Philadelphia, Baltimore and Washington Railroad Company to the "land" affected by section 13 of the act of March 2, 1907.

Is not this relation worthy of serious consideration among the other "circumstances" to be considered by the Secretary of War in determining the amount proper to be paid by Mr. Bieber for the right, title, and interest of the United States, if any there be, in and to lands in the creation of which Mr. Bieber had no part and bore no burden?

Third. As to the relation of the public to the subject matter of this inquiry.

Though this "relation" is probably the most important of the three, it is by reason of that very fact so obvious that but little need be said here concerning it.

By its joint resolution of April 11, 1898 (30 Stats., 738), the Congress directed the Secretary of War to prepare and submit

> a project for the improvement of the Anacostia River and the reclamation of its flats from the line of the District of Columbia to the mouth of said river, with an estimate of the cost of the same and a report on the area and ownership of the land to be reclaimed.

Pursuant to this joint resolution the Secretary of War, under date of December 14, 1898, submitted to the Congress the report of Lieut. Col. Charles J. Allen, Corps of Engineers, dated December 1, 1898.

The views of Lieutenant-Colonel Allen expressed in this report were concurred in by Brig. Gen. John M. Wilson, Chief of Engineers, U. S. A., who also commended "this important work to the favorable consideration of Congress." (H. R. Report No. 87, 55th Cong., 3d sess.)

In the course of his report Lieutenant-Colonel Allen in commenting upon the necessity for the improvement of the Anacostia River, said (p. 9):

The necessity for the improvement of Anacostia River has been so fully recognized by Congress in the joint resolution of April 11, 1898, and in previous acts and resolutions calling for surveys or making appropriations for temporary relief to navigation, that no arguments are needed here to emphasize the importance of this work. It is sufficient to review in a general way, the principal reasons for the project as submitted, and which are as follows:

"1. *Access to the navy-yard.*

* * * * * * *

"2. *Increased facilities for commerce and navigation.*—The trade and commerce of Washington are increasing with the growth and extension of the city. Statistics of river traffic during the last ten years, for instance, show an almost steady increase in receipts and shipments of coal, ice, lumber, sand, wood, etc., while the number of vessels arriving and departing each year shows a like increase. The wharf front along the Washington channel furnishes nearly all the existing wharf facilities, and these have been reported as inadequate. * * * As practically all the remainder of the Potomac River front below Easbys Point is taken up by Potomac Park (the reclaimed area of Potomac flats) the only place for adequate expansion would be the water front of Anacostia River, where, with a wide and deep channel for navigation, there would be admirable facilities for the construction of substantial and commodious wharves, giving close and convenient access to the southeastern section of the city with a comparatively short haul for delivery of mateial and supplies."

"3. *Removal of unsanitary conditions.*—The greater part of the area of the Anacostia River along the city front is made up, as already stated, of wide and extensive flats. * * * Along the Anacostia front of the city there are reported no less than eight sewer outfalls, commencing with the large boundary sewer on the north and ending with James Creek Canal, near Buzzards Point * * * (p. 10). The result of this unsanitary condition is, as reported, the prevalence of malarial diseases in the portions of the city and district which border the river. * * *

"The unsanitary conditions which exist on the Anacostia River are substantially the same as those that existed on the Potomac in front of the city of Washington prior to the inception of the Potomac River improvements. * * * The success of the Potomac work gives every encouragement to undertaking similar work on the Anacostia, for the double purpose of channel and sanitary improvement * * *."

After stating that the harbor lines established in 1892 would bear upon any plan for improvement by dredging and that an extension of such lines from Pennsylvania Avenue bridge to Benning bridge and a system of channel dredging from the mouth to Benning with the depositing of the dredged material upon the flats behind bulkheads would best meet the requirements "as far up as Benning," the project was divided by Colonel Allen into three sections, as follows:

Section I. From the mouth to Navy-Yard bridge.

Section II. From Navy-Yard bridge to Benning bridge.

Section III. From Benning bridge to the District line.

Estimates in detail of the cost of doing the work on the three different sections were submitted, and the estimated cost of executing the project on the cheapest basis and confining it to sections 1 and 2 only amounted to $2,194,720.

By act of Congress of June 13, 1902 (32 Stats., 351), Congress "with a view to the interests of commerce and navigation, in accordance with such portions of the report submitted in House Document No. 87, Fifty-fifth Congress, third session, as relate to section one of said river being the portion below the Navy-Yard bridge," appropriated the sum of $150,000, in addition to which amount the sum of

$20,000 had already been allotted to this work, and theretofore expended from the appropriation of September 19, 1890, for improving the Potomac River.

The project thus adopted by Congress in the furtherance of which work is now progressing, provides for the improvement of that portion of the Anacostia River below the Navy-Yard bridge by dredging a channel at least 24 feet deep for a width of 400 feet, and depositing the dredged material on the adjacent flats to an average elevation of 7 feet above low tide, the reclaimed area to be surrounded by an earth embankment to a height of 14 feet above low tide, protected by a masonry sea wall and provided with suitable drainage, at an estimated cost of $1,218,525.

In his annual report for 1905, Appendix K, the Chief of Engineers reported that the amount expended on the existing project (section 1 as above) to June 30, 1905, was $149,950.36, and

> The improvement already made has been of benefit to navigation, *and has resulted in the diversion of considerable traffic from the Washington channel, where conditions were rapidly becoming congested* (p. 207).

In the same report (p. 1157) the recommendation is made—

> that such land as is required for the improvement be acquired, and that all matters as to riparian rights and ownership of the reclaimed lands be settled by the condemnation and purchase of a strip of land adjacent to the shore, or otherwise, before the flats at these localities are reclaimed.

In the report of Lieut. Col. Smith S. Leach, Corps of Engineers, dated July 31, 1905, accompanying the next above, it was again said (p. 1156):

> The trade and commerce of Washington are increasing, while the wharf facilities along the Potomac front are inadequate for the present traffic and afford no room for expansion. The improvement of the Anacostia will give the needed additional wharfage facilities and will afford abundant anchorage facilities, which do not now exist in this vicinity.

From the report of July 23, 1906, of Capt. Spencer Cosby, Corps of Engineers, accompanying the Annual Report of the Chief of Engineers for 1906, it appears that in addition to the sum of $149,950.36 theretofore expended, there had been expended during the fiscal year ending June 30, 1906, the further sum of $1,512.70, and that in addition to the benefit to navigation the total expenditure on the project to that date had resulted in reclaiming about four hundred and sixty (460) acres of desirable land, in addition to providing a channel 20 feet deep at mean low tide and of at least 300 feet wide (except at Buzzards Point, where the width is about 240 feet) for a distance of over 9,100 feet upstream from the mouth of the Anacostia River; that is, up to about the center of the navy-yard.

It is true that the appropriations so far made provide only for the prosecution of work on section 1 of the project, but it is also true that the project as a whole must eventually be undertaken and completed. Until section 1 shall have been completed, at least so far as dredging the channel is concerned, it would be illogical to begin the necessary dredging in section 2, but when the first shall have been completed the second naturally and necessarily will follow.

Already the harbor lines established in 1892 have been found to be unsatisfactory, and on April 23, 1904, a report and accompanying maps showing the proposed modifications to be made in the existing lines were submitted to the Secretary of War for his approval.

These modified harbor and bulkhead lines apply to the lands and waters embraced in section 2 of the project proposed by Lieutenant-Colonel Allen and adopted by the Congress in 1902, and have now been approved by the Secretary of War.

Pursuant to the House of Representatives concurrent resolution No. 21 of February 27, 1906, requiring the Commissioners of the District of Columbia "to submit to Congress a report upon the improvement of the so-called flats of the Anacostia River, *from its mouth to the District line*, with recommendations and estimates of cost," the said Commissioners under date of June 21, 1906, made a report (H. R. Ex. Doc. 903, 59th Cong., 1st sess.) in which special and favorable reference was made to the general project proposed in 1898 by Lieutenant-Colonel Allen for the improvement of the Anacostia River from the District line to its mouth, and attention was also called to the fact that—

> the subject of the treatment of the Anacostia River and flats was taken up by a commission appointed March 1, 1901, by the United States Senate, to report on a park system for the District of Columbia,

and reference was also made to the recommendations of that commission. (For report see Senate Report No. 166, 57th Cong., 1st sess.) In their report the District Commissioners recommend that—

> The Pennsylvania avenue highway bridge and the Pennsylvania (Philadelphia, Baltimore and Washington) Railroad bridge should be rebuilt in such a manner as to allow the passage of vessels.

And also say that it was—

> practically impossible to estimate with any degree of accuracy the cost of the project until the value of such land not now belonging to the United States as may be found to be necessary and the value of the riparian rights of private owners are determined.
>
> * * * * * * *
>
> In the report of the War Department made in 1898 the assessed value of what was considered private land was put at about $23,000, but there can be no question that the value as determined by a jury will be many times greater. The value of the riparian privileges may be very small, on account of the shallowness of the stream and the present nonavailability for commercial purposes; but, on the other hand, it may amount to a million dollars or more.
>
> To offset this cost there will be in the commercial section a filling in of 600 or more acres of land, which, if the riparian rights are obtained, will belong to the United States, and can be utilized either as a park or sold for commercial use. *This will offset, to a considerable extent, the cost of the project, and if it is leased will doubtless give an adequate return on the money spent.*
>
> Within any reasonable cost, and it is thought that three or four million dollars is reasonable, the desirability of this improvement is extremely great. The land now available for wharfage facilities in Washington is too limited, and the wharf frontage is now already crowded. To carry out the project would quadruple the water front along a navigable channel.
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> * * * * * * *
>
> The Commissioners, therefore, as a first step to be taken, would recommend an appropriation of $10,000 to employ counsel to investigate and determine as far as possible as to the ownership of the land and riparian rights along the Anacostia River, and after this is known to prepare a plan for improvement, or if ownership and rights can not be thus ascertained, that the Attorney-General be directed to bring suit for the purpose.

In an opinion dated September 6, 1905, the Acting Attorney-General advised the Secretary of War that the title of the United States to lands embraced in the so-called Anacostia flats

> was derived from the same source and is of the same nature as its title to what is known as the Potomac flats, which has been judicially established. (See

Morris *v.* United States, 174 U. S., 196.) It rests upon the cession made by the act of the State of Maryland of December 23, 1788, entitled "An act to cede to Congress a district 10 miles square in this State," which was accepted by the act of Congress approved July 16, 1790, and the act of March 3, 1791, amendatory thereof, and was subsequently ratified by an act of the State of Maryland, passed December 19, 1791. By this legislation the United States became invested with the title to the shores and beds of the navigable waters within the limits of the territory so ceded, embracing the Eastern Branch, or Anacostia River, as it was then navigable, as well as the Potomac River, which title was held by the United States (as it previously was by the State) *in trust for public purposes.*

The lands included within the Anacostia flats, as shown by the said survey, appear to be either submerged or subject to tidal overflow by the waters of the Eastern Branch, and are a part of the bed of the latter. The accompanying papers furnish no information as to the existence of any private claims affecting these lands. It is probable, however, that claims to riparian rights and wharfing privileges do exist on the part of owners of property fronting on the Eastern Branch; and the Baltimore and Potomac Railroad Company, whose tracks cross the flats in question, may have claims in connection with its right of way upon the same. Subject to the existence and validity of such claims, if any, I think that the ownership of all the land embraced within what is known as the Anacostia flats * * * is vested in the United States for public purposes.

In its report (S. 166, 57th Cong., 1st sess.) the park commission emphatically states (p. 115) that—

Provision should be made for the public control of the entire water front from the Government property at the southern end of the District to "Anacostia Park" at Massachusetts avenue. * * *

Whatever disposition may be made of the reclaimed land, however, the embankment itself and its immediate margin should remain under public control * * * (p. 117). On the Washington side of the Anacostia River it is equally important that the permanent public control of the water front should be made a part of the channel improvement and that a consistent comprehensive project should be adopted for its treatment in connection with the improvement of the western water front along Washington channel, recently brought under public control by the decisions of the courts. A decision upon the method of improvement involves * * * the careful consideration of so many interests, private property rights * * * and, above all, the convenience of commerce, that the commission is not prepared to make a definite recommendation; *but it seems highly important that the water front improvement should be utilized to the utmost in providing a southern parkway connection between the Anacostia section of the District and Potomac Park, against which the Washington embankment would terminate at the northwestern end of Washington channel on the line of Long Bridge.*

In spite of all of the above, and of the expenditure of the already vast sums of money made in the partial development of the park commission's comprehensive scheme for the beautification of Washington and the District of Columbia, and in spite of the obvious necessity for the added wharfage facilities which the limited frontage of the Anacostia River alone offers to the commerce of Washington, and in spite of the equally obvious fact that in the continued prosecution of the accepted scheme for the improvement of the water front of the Anacostia River, it will shortly become necessary for the United States to adopt measures to acquire absolute control of the whole thereof, it is now here proposed, without any disclosed reason, to transfer a considerable stretch of such water front for a probably nominal consideration to a private individual, Mr. Sidney Bieber.

In determining the amount proper under all the circumstances to be paid by Mr. Bieber for this stretch of water front, shall not the probabilities of the future and the undoubted interests of the general public be accorded serious weight?

Why should the constitutional power of the Congress to dispose of the property of the United States be gratuitously exercised in favor of a stranger, without due regard to the interests of the public, for whose benefit the Congress holds such property in trust?

In requiring the Secretary of War to determine "upon consideration of all the circumstances" the amount proper to be paid by Mr. Bieber "for the said land," did not the Congress impose upon the Secretary of War the duty of protecting the public and of seeing to it that the public treasury should not be improperly reduced nor opened to future attack?

In view of the uncertainty as to the exact interest of the United States in the "land" proposed to be transferred to Mr. Bieber, why should not the matter of determining the price to be paid therefor be held in abeyance until the true extent and character of that interest has been first definitely determined?

WAYNE MACVEAGH,
FREDERIC D. MCKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for the Philadelphia, Baltimore and Washington R. R. Co., successor in interest to the Baltimore and Potomac Railroad Company.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 391.

REQUESTING RETURN TO COURT OF CLAIMS OF FINDINGS IN CASE OF ELLEN L. FAUNCE.

LETTER FROM THE CHIEF JUSTICE OF THE COURT OF CLAIMS, TRANSMITTING A LETTER FROM ASSISTANT ATTORNEY-GENERAL JOHN Q. THOMPSON ASKING FOR THE RECALL OF THE FINDINGS IN THE CASE OF ELLEN L. FAUNCE, ETC.

MARCH 16, 1908.—Referred to the Committee on Claims and ordered to be printed.

UNITED STATES COURT OF CLAIMS,
Washington, D. C., March 13, 1908.

SIR: I herewith forward to you a letter from Hon. John Q. Thompson, Assistant Attorney-General, having charge of the defense of cases in this court on behalf of the Government, respecting the claim of Ellen L. Faunce, widow of Peter Faunce, deceased, *v.* The United States, No. 10942 Congressional, C. & F. 82, wherein the court certified findings to Congress December 5, 1906, for $291.09.

As the letter indicates, the amount found due was based on the return from the accounting officers of the Treasury Department, wherein it appeared that of the amount due $110.67 had been paid, whereas by later returns it appears that said amount had not been paid, and that for that reason the findings are for $110.67 less than they should have been.

Therefore, as requested by the Assistant Attorney-General, I have the honor to request that the findings so certified be returned to the court for further consideration under the evidence now before it.

Very respectfully,

STANTON J. PEELE,
Chief Justice.

Hon. CHARLES W. FAIRBANKS,
President of the Senate, Washington, D. C.

DEPARTMENT OF JUSTICE,
Washington, March 13, 1908.

DEAR SIR: I have the honor to call your attention to the letter of the Auditor for the Navy Department to the Comptroller of the Treasury, dated January 7, 1907, filed January 14, 1907, in the case of Ellen L. Faunce, widow of Peter Faunce, *v.* The United States, No. 10942, Cong., C. & F., 82.

I understand that the court has made its findings in the above-named case and transmitted the same to Congress. These findings, it will

appear, were based largely upon the report of the Comptroller of the Treasury, which contained an error, as shown in the communication above mentioned, the error, as may be seen, amounting to $110.67, to which amount the claimant apparently is entitled in addition to the amount expressed in the findings already made.

In order that justice may be done, it appears to me that the court should recall its findings and make the necessary correction.

Very respectfully,

JOHN Q. THOMPSON,
Assistant Attorney-General.

Hon. STANTON J. PEELLE,
Chief Justice, Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 393.

REPORT ON SURVEY FOR WAGON ROAD IN YELLOWSTONE NATIONAL PARK.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A REPORT PREPARED BY THE ENGINEER IN CHARGE OF ROAD-BUILDING AND IMPROVEMENTS IN THE YELLOWSTONE NATIONAL PARK ON A SURVEY MADE FOR A NEW ROAD FROM THE WEST GALLATIN RIVER TO CONNECT WITH THE MAIN-TRAVELED ROADWAY IN SAID PARK.

MARCH 17, 1908.—Referred to the Committee on Public Lands and ordered to be printed with illustrations.

WAR DEPARTMENT,
Washington, March 12, 1908.

SIR: By direction of the President, I transmit herewith copy of House Document No. 502, Sixtieth Congress, first session, which contains the report called for in Senate resolution of March 6, 1908, directing the Secretary of War—

to forward to the Senate a report prepared by the engineer in charge of road building and improvements in the Yellowstone National Park on a survey made for a new road from the West Gallatin River to connect with the main traveled roadway in said park, at or near Golden Gate or Mammoth Hot Springs.

Very respectfully,

WM. H. TAFT,
Secretary of War.

The PRESIDENT OF THE SENATE.

[House Document No. 502, Sixtieth Congress, first session.]

WAR DEPARTMENT,
Washington, January 14, 1908.

SIR: I have the honor to transmit herewith a letter from the Chief of Engineers, U. S. Army, dated January 11, instant, together with copy of a report, with maps, from Lieut. E. D. Peek, Corps of Engineers, dated October 19, 1907, of a survey for wagon road to

connect Mammoth Hot Springs in Yellowstone National Park with road heretofore constructed by Gallatin County, Mont., said report being made in compliance with the provisions of an item contained in the sundry civil act of March 4, 1907.

Very respectfully, WM. H. TAFT,
Secretary of War.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, January 11, 1908.

SIR: I have the honor to submit herewith, for transmission to Congress, a report of Lieut. E. D. Peek, Corps of Engineers, on a survey made in accordance with the following provision of the sundry civil act of March 4, 1907:

also not exceeding one thousand dollars which shall be used for the survey of a wagon road for light vehicles connecting the Mammoth Hot Springs in the Yellowstone National Park to a point on the western boundary of said park where the West Gallatin River crosses the boundary line of said park and connecting with the wagon road heretofore constructed by Gallatin County, Montana, along the West Gallatin River. The Secretary of War is directed to report from such survey to the next session of Congress estimates of what it would cost to construct such road and upon the advisability and feasibility of such construction. * * *

A letter of March 13, 1907, from Hon. J. M. Dixon, also herewith, stated that the people of Bozeman, Mont., were more interested locally in the construction of the road than anyone else, and requested that the survey be started from the Bozeman end. There was on file a letter dated April 14, 1904, from a committee of the citizens of Bozeman, to Hon. Paris Gibson, United States Senate, stating their desire that the road should be constructed by way of Big Horn Pass, and a survey of that route was first made therefor, and submitted to members of the Gallatin Commercial Club at Bozeman by Lieutenant Peek on August 5, 1907. It was the unanimous decision that the Big Horn route was not as desirable as a route by way of Specimen Creek, an examination of which was accordingly made under the direction of Lieutenant Peek and found impracticable, as was the case also with another route examined leading up the south branch of Fan Creek. A fourth route was surveyed by way of Fan Creek, Snowshoe Pass, Gardiner River, and Glen Creek, and Lieutenant Peek reports the practicability of construction at a cost of $32,055 for a crude road, and of approximately $100,000 for a road comparing favorably with those of the park system. A previous report on the subject by Maj. H. M. Chittenden, Corps of Engineers, referred to in the report of Lieutenant Peek, is also submitted herewith. In an indorsement of December 6, 1907, Lieutenant Peek reported that although the snow will remain later on the Snowshoe Pass route because of its greater elevation, that route is preferred to the Big Horn Pass route on account of the general character of the soil and open country.

It appears from these reports that the present superintendent of the park, Lieut. Gen. S. B. M. Young, U. S. Army, retired, a former superintendent, Maj. John Pitcher, Seventh U. S. Cavalry, Major Chitten-

den, and Lieutenant Peek, are unanimous in the opinion that the construction of the proposed road is not advisable, principally for the reasons that the burden of maintaining the necessary existing roads and of properly guarding the park is now very great, and that the proposed new road would add materially to this burden without any corresponding benefit to the general public. On account of its greater altitude and the consequent difficulty of passage occasioned by snow, the proposed new approach would not be available until much later in the season than the existing approaches, and, from its position as illustrated by the map submitted herewith, it will be seen that practically it would be only of limited local service. Major Chittenden states, in effect, that it would be used for camping expeditions by the people of Bozeman and that locality only, who can be better served by the existing route by way of the Trail Creek divide, about 26 miles shorter than the route proposed.

The enterprise displayed by the citizens of Bozeman and their interest in the development of a new route of attractive mountain scenery are appreciated, but, in view of the great expenditure of national funds which has been made for the development of the park, of its present accessibility, of the expense of maintaining the roads already constructed, and of the difficulty of protecting it, especially from devastation by fire, I am constrained to coincide with the opinion above stated, and to recommend that Congress be informed that the construction of the proposed road is feasible but not advisable.

Very respectfully,

A. MACKENZIE,
Brig. Gen., Chief of Engineers, U. S. Army.

The SECRETARY OF WAR.

REPORT ON SURVEY FOR WAGON ROAD TO CONNECT MAMMOTH HOT SPRINGS IN YELLOWSTONE NATIONAL PARK WITH ROAD HERETOFORE CONSTRUCTED BY GALLATIN COUNTY, MONT.

IMPROVEMENT YELLOWSTONE NATIONAL PARK,
UNITED STATES ENGINEER OFFICE,
Yellowstone Park, Wyo., October 19, 1907.

GENERAL: I have the honor to transmit herewith report, maps, and estimate for the proposed Gallatin road, as provided for in the sundry civil bill, dated March 4, 1907.

The survey party left Mammoth Hot Springs on June 9 and completed the field work on July 2, 1907. This survey was from the 7-mile post on the Mammoth Hot Springs-Norris road via Big Horn Pass to the intersection of the Gallatin and west boundary of the park, as outlined in the inclosed papers from the people in Bozeman.

On August 4 the map and estimate were completed, and on the 5th I visited Bozeman and had a conference with Mr. Casey and other members of the Gallatin Valley Commercial Club. The members of the party were all unanimous in the decision that the route over Big Horn was not as desirable as a route up the Gallatin to Specimen Creek and thence north of Joseph Peak and down the Gardiner and Glen Creek to Golden Gate. One member had been over Big Horn Pass with Hon. J. M. Dixon, but from conversation with Mr. Thorpe, a civil engineer of Bozeman, they favored the Specimen Creek route.

In view of the fact that the Bozeman people condemned the Big Horn route, a second party was outfitted and left Bozeman on July 28 and proceeded up the Gallatin to the park boundary. The survey was begun on the 31st.

The Specimen Creek route was examined as stated in the inclosed report, and was not deemed suitable, as was also a route up the south branch of Fan Creek. A third attempt was made, and a route surveyed up Fan Creek and over Snowshoe Pass, down the Gardiner and Glen Creek to Golden Gate.

The estimated cost for a 12-foot mountain road via the Big Horn Pass route (26.8 miles) is $28,933, and of the route through Snowshoe Pass $32,055 (29.9, practically 30 miles). These roads as estimated would be very crude as compared with the roads of the park system. To build a road which would compare favorably with those already in the park would necessitate approximately $100,000. Of the two routes the second is far more feasible; but it is objectionable in my opinion for many reasons, as is any other road which it may be desired to build into the park.

I can only reiterate each and every word of the report of Maj. H. M. Chittenden, dated May 23, 1904, on the same subject.

I may also add to the above that the survey through Big Horn Pass was more than difficult, as over 4 miles of the route in the vicinity of the pass was under snow varying in depth from a foot to several feet, and this in the middle of June.

The Snowshoe Pass route will probably be a great deal more difficult to pass through on account of snow, as it has an elevation of 9,560 feet, and snow will always be here until the middle of July.

As stated in my annual report of June 30, 1907, the road system of this park is slowly falling into decay, as the money for repairs does not keep pace with the wear caused by traffic. If this road, some 30 miles in length, were added to the already large number of miles of roadway in the park, it would certainly make matters still worse.

In regard to the views of the present superintendent, Gen. S. B. M. Young, on the subject, I beg to submit an extract from the Annual Report for 1907

Another survey was made for a road to connect the Gallatin with the circuit near the 7-mile post. A route was surveyed through Big Horn Pass and declared unfavorable. Another route begun up Specimen Creek from the Gallatin and the survey discontinued on account of rough country. Third survey was made from the Gallatin up Fan Creek and Stellaris Creek, thence through the pass north of Joseph Peak. This road is also deemed unfavorable, both as regards distance and elevation. The distance from Bozeman outside the park to Gardiner, thence by the main road in the park to the Golden Gate is 69 miles. The distance between the same points up the Gallatin River via the proposed route is 95 miles.

By a glance at the map it will be seen there are at present four main highways entering the park: On the north at Gardiner leading up the Gardiner canyon to Mammoth Hot Springs and then through Golden Gate to interior of park. On the east leading from Cody following up the north fork Shoshone River and entering the park at Middle Creek, thence through Sylvan Pass to the interior at Yellowstone Lake outlet. On the south leading from Dubois via Jackson Lake up Snake River entering the park at Lewis River, thence north to the interior at West Thumb of Lake Yellowstone. On the west leading up Madison River to the interior at the junction of Gibbon and Firehole rivers. There is a good road leading from Cooke at northeast corner of park down Soda Butte Creek and Lamar River, thence via Mammoth to Gardiner. This is the only outlet or inlet to Cooke by wheel transportation, and was originally the trail leading from Gardiner to Cooke traveled by prospectors and exploiters.

The mileage of roads to be kept in repair is 111 miles outside the park and 306 miles within the park, making a total of 417 miles.

The proposed road to connect the Gallatin Valley with the circuit road near the *Golden Gate* does not meet with my approval.

A copy of the report of David Lay, who was in charge of the survey party, is appended hereto.

The question of the cost of this road is the least factor to enter into the argument. It is a question of the benefit to the park and the extra cost for maintenance and harm which may result if another avenue is opened and which can not be properly guarded as concerns the protection of wild animals.

The building of a 12-foot mountain road would be very easy, but it would not be accessible till July 15 on account of snow. As before stated, it is more of a question of advisability, and I am of the opinion that for the interests of only a very few people who live in the Gallatin Valley that the general interests of the community at large as concerns the park would suffer if another route were built.

Very respectfully, your obedient servant,

E. D. PEEK,
First Lieutenant, Corps of Engineers.

Brig. Gen. A. MACKENZIE,
Chief of Engineers, U. S. Army.

REPORT OF MR. DAVID LAY, ASSISTANT ENGINEER.

RED LODGE, MONT., *October 14, 1907.*

DEAR SIR: In compliance with your request I herewith submit maps, profiles, and estimate of the cost of construction of the proposed Gallatin road in Yellowstone Park.

The first survey was begun June 9 and completed July 2, 1907. The beginning point for this survey was the 7-mile post—that is, 7 miles from Mammoth Springs and 13 miles from Norris Basin on the main road between those two points. (This point is near the south or right bank of the Gardiner River.) From this point I ran in a westerly course for about three-fourths of a mile to and across Indian Creek; thence in a westerly course for about 2¾ miles, where I crossed Panther Creek; thence in a southwesterly course up Panther Creek to the Big Horn Pass, which is 8½ miles from initial point; thence in a northwesterly course to the Gallatin River; thence followed the right bank of said river to a point about 19 miles distant from the initial point, where I crossed the Gallatin River to the left or west bank; thence followed down said river to the western boundary line of the Yellowstone Park, being a total distance of 26.82 miles. The grades on this route are quite easy for a mountain road, there being none exceeding 11 per cent, and that grade is only about one-half mile in length and is immediately east of the Big Horn Pass. The elevation of the pass is 9,030 feet. There is about 4 miles of this route that has a grade of from 7 to 10 per cent and the remainder has a much smaller grade, all of which will be observed by reference to the profile. The landscape over which this route passes is very beautiful and it affords the most ideal camping grounds to be found anywhere.

I have made the following estimate of the probable cost of construction:

Clearing timber, brush, etc.		$1,100
17 bridges (8 to 40 feet long)	$610	
61 culverts, at $10	610	
		1,220
31,654 cubic yards earth, at 50 cents		15,827
7,716 cubic yards loose rock, at $1		7,716
1,228 cubic yards solid rock, at $2.50		3,070
Total		28,933

On the second or last survey I outfitted at Bozeman, Mont., and proceeded from there up the Gallatin River with team and wagon to the west boundary of the Yellowstone Park; from there I proceeded with pack outfit on the 31st of August, 1907. I first made a careful examination of the proposed route up Specimen Creek (as indicated on map by dotted line). This route I found to be a hard proposition for several reasons, the first of which is the fact that nearly the entire route is covered with heavy

forest; second, a very large proportion of the surface of the ground is either swampy or strewn with bowlders, which would make the cost of road building very expensive, and in my opinion this route would be but very little shorter than the one selected up Fan Creek.

I also made an examination for a route up the south branch of Fan Creek and over the divide (as shown by dotted line on map). This route would have shortened the distance about 3 miles, but I found it impractical on account of heavy timber, swamp, and other obstructions, so that I decided on Fan Creek as being the most feasible route to Snow Shoe Pass. I began the second survey at Station 206 of the original survey, which point is opposite the mouth of Fan Creek and about 5.3 miles from the west line of the park. Proceeding from this point I crossed the Gallatin River just above its junction with Fan Creek; thence up Fan Creek for about 3½ miles, where I crossed Fan Creek to the north side; thence up said Fan Creek on the north or right-hand side to Snow Shoe Pass, which has an elevation of 9,560 feet, and is 18¼ miles from the western boundary line. From the pass I ran in an easterly course on the north side of the creek for a distance of about 3½ miles, where I found it necessary to cross the creek to the south side (on account of the very rough character of the land at the mouth of Electric Creek); thence over the point of Little Quadrant Mountain and down to the Gardiner River; thence across the Gardiner River and over the very low divide to Glen Creek; thence down Glen Creek to Golden Gate, the entire distance from the west boundary line to Golden Gate being 29.9 miles.

About 40 per cent of this route is nice open country and would cost but little to construct a fairly good road. The remainder, or 60 per cent, is mostly through scattering timber, with few patches of heavy timber. The grades up the Gallatin River and Fan Creek are very easy, while the grades going over the mountain are considerably steeper, the maximum being about 10 per cent. This I consider very good for a mountain road. On the east side of the pass the grade is less than 10 per cent, mostly about 8 per cent and less, to the Gardiner River. From the Gardiner River to Golden Gate the grade is quite easy. This survey was completed September 19, 1907. I have made the following estimate of the probable cost of construction based on 12-foot roadbed, viz:

Earthwork, 41,024 cubic yards, at 50 cents	$20,512
Loose rock, 4,263 cubic yards, at $1	4,263
Solid rock, 1,178 cubic yards, at $2.50	2,945
Clearing, etc	1,350
18 bridges and trestles, native materials	2,055
93 culverts, native materials	930
Total	32,055

Respectfully submitted.

DAVID LAY.

Lieut. E. D. PEEK,
Corps of Engineers, U. S. A., Yellowstone Park, Wyo.

IMPROVEMENT OF YELLOWSTONE NATIONAL PARK,
UNITED STATES ENGINEER OFFICE,
Yellowstone Park, Wyo., May 23, 1904.

GENERAL: I have the honor to submit the following report upon a petition of citizens of Bozeman, Mont., for a Government road in the northwest corner of the Yellowstone National Park, referred to me by second indorsement upon a letter of the Hon. Paris Gibson, United States Senator from Montana, to the Secretary of War.

(1) The proposed road is one in which the citizens of Bozeman have taken an interest for a number of years, and the subject has frequently been brought to my attention in an unofficial way. I have always discouraged the project because there is no public necessity for it. The park has now four entrances or approaches, one on each side. These approaches are by the natural routes, taking advantage of the topography of the country, and there are no others to compare with them. They are sufficient for any future public need that can be foreseen.

The route proposed by the people of Bozeman could never become of any value as a general entrance to the park. From Bozeman to the park boundary is 65 miles, from there to the main line of the park road system is 25 miles, and from there to the nearest hotel or point of interest is 7 miles, a total of 97 miles. Of this distance, about 60 miles has been built at an expenditure of about $10,000, or about $167 a mile. This

figure alone shows what must be the character of the road outside of the park. It is clear that the general public will not travel over such a road and then half as far again to reach the nearest hotel in the park when they can go to the boundary by rail and reach the same place in a drive of 5 miles over an excellent road.

(2) As above explained, this road would be of no public utility. It would be used for camping expeditions by the people of Bozeman and that locality only. It would be purely a local affair. But even the people of Bozeman can be better served by the present route. The distance from Bozeman to Mammoth Hot Springs via the proposed route is, as already given, 97 miles; by way of the Trail Creek divide, an old established road, to Gardiner and thence to Mammoth Hot Springs it is only 71 miles. There is no conceivable reason why the latter route should not serve the local public better, unless it be that it misses the scenery of the Gallatin Range of mountains, which would doubtless be finer than along the present route. * * *

(3) The cost of this road to the Government, if built in a way at all substantial and complete, would be not less than $100,000. It could be opened for less money, but a thoroughly good road could not be built for less. The divide which it would cross is higher than any pass on the present road system, and it would be closed by snow as late as the 1st of July each year.

(4) It is the policy of those who have had in charge the development of the park road system to avoid any undue extension of the roads. It is not contemplated doing more than to give easy access on all sides of the park to its great distinctive features of interest. There are other points where the mountain scenery is as fine as in the G llatin Range, but which will probably never be reached by a public highway. It is desired to keep the park as much as possible in its natural condition and not to fill it with roads or buildings. The burden of maintaining the necessary roads is a very great one and it should not be increased except for the best of reasons.

(5) The following are the views of the superintendent of the park, Maj. John Pitcher, Sixth Cavalry, as to the bearing of the suggested road upon the question of patrolling and guarding the park:

"I agree entirely with you concerning the objections to the construction of the road referred to in the inclosed papers.

"It is almost impossible to properly guard the park now, and any additional entrances to the park simply increase this difficulty. I am decidedly opposed to the construction of this road, and will be glad to have you state this fact to the Chief of Engineers."

(6) Even if the road were a desirable one from a public point of view, no part of the present appropriation could be used in building it. No estimate was made for it, as for the east road and other new work, and no money was appropriated for it.

Very respectfully, your obedient servant,

H. M. CHITTENDEN,
Major, Corps of Engineers.

Brig. Gen. A. MACKENZIE,
Chief of Engineers, U. S. Army.

UNITED STATES SENATE,
Washington, D. C., March 13, 1907.

SIR: The sundry civil bill passed at the last session of Congress contains a provision directing the Secretary of War to survey a road in the Yellowstone Park to connect the present public road constructed by Gallatin County, Mont., along the west fork of the Gallatin River from a point at the northwest corner of the park, connecting with the road to Mammoth Hot Springs.

I personally went over every foot of this ground a year ago last summer and have no hesitancy in saying that the proposed road opens up the finest scenery into the park. The purpose of my amendment to the sundry civil bill directing the survey to be made was for the construction of a road for light vehicles. I am painfully aware that the local administration of the park in the War Department, for some reason or other, has been adverse to the building of this road.

In making the survey I wish that the spirit of the appropriation could be carried out and that the survey would provide for a cheaply constructed road for "lightly loaded vehicles." The people in western Montana are especially desirous of an entrance into the park for private camping parties. We do not want an expensive road constructed there, and I fear that the local management in making the survey might inadvertently survey a road the cost of which would be prohibitive. All that the people want is a road that is passable for camping parties. Two civil engineers who have been over the proposed line have assured me that the road contemplated can easily be constructed at a cost of $15,000.

I have received several letters from the people at Bozeman, Mont., who are more interested locally in the construction of this road than anyone else, and they are most desirous of having the engineers come to Bozeman and start from that end of the line in making the survey, as it will give them a better idea of the kind and character of road to correspond with the public road already constructed by that county up to the park line. I would request that the engineers be given orders to start the survey from the Bozeman end.

Yours, very truly, J. M. DIXON.

The SECRETARY OF WAR.

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THREE O RIVER
PEAK

COLUMBIA PLANOGRAPH CO., WASHINGTON, D. C.

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 394.

LIST OF ROLLS OF CHOCTAW AND CHICKASAW INDIANS IN POSSESSION OF AUDITOR FOR INTERIOR DEPARTMENT.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING,

PURSUANT TO SENATE RESOLUTION OF JANUARY 15, 1908, A LIST OF THE ROLLS OF THE CHOCTAW AND CHICKASAW INDIANS NOW IN THE POSSESSION OF THE AUDITOR FOR THE DEPARTMENT OF THE INTERIOR, ETC.

MARCH 19, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, March 13, 1908.

SIR: In reply to the resolution of the Senate of January 15, 1908—

That the Secretary of the Treasury be, and he is hereby, requested to send to the Senate a list of the rolls of the Choctaw and Chickasaw Indians now in the possession of the Auditor for the Department of the Interior, and when, and by whom, and for what purpose said rolls were prepared as appears therefrom.

I have the honor to transmit herewith, by direction of the President, copy of the report made in the matter by the Auditor for the Interior Department on the 13th instant, together with a schedule of the rolls in his office relating to payment by United States Indian agents to Choctaw and Chickasaw Indians for the period from July 1, 1874, the date when the Union Agency was established at Muskogee, Ind. T. (now Oklahoma), to September 30, 1907.

Respectfully, GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR INTERIOR DEPARTMENT,
Washington, March 13, 1908.

SIR: I have the honor to return herewith the resolution of the Senate of the United States No. 68, dated January 15, 1908, requesting that there be sent to the Senate a list of the rolls of the Choctaw and Chickasaw Indians now on file in this Department, showing when, by whom, and for what purpose the said rolls were prepared, the resolution having been referred by you to me January 16, 1908, for report.

In reply I transmit herewith a schedule of the rolls of the Choctaw and Chickasaw Indians for the period from July 1, 1874, to September 30, 1907, which it is believed supplies the information desired.

The records in this Office show that payments to the Choctaw and Chickasaw Indians for the periods from July 1, 1874, to December 31, 1886, and from April 1, 1889, to June 28, 1898 (Curtis Act, 30 Stat., 495), were made by the treasurers of the tribes, and the rolls showing such payments have not been received.

Respectfully,

R. S. PERSON,
Auditor.

The SECRETARY OF THE TREASURY.

List of rolls in the office of the Auditor for the Interior Department, showing payment by United States Indian agents to Choctaw and Chickasaw Indians for the period from July 1, 1874, date when the Union Agency was established at Muskogee, Ind. T. (now Oklahoma), to September 30, 1907.

No.	When prepared.	By whom prepared.	For what purpose prepared.	Tribe.	Number of Indians enrolled.	By whom and when paid.
1	Not shown	R. L. Owen	Annuity payment	Choctaw	83	R. L. Owen; voucher 16, fourth quarter 1886.
2	do	do	do	do	57	R. L. Owen; voucher 7, first quarter 1887.
3	do	do	do	do	29	R. L. Owen; voucher 15, second quarter 1887.
4	do	do	do	do	22	R. L. Owen; voucher 8, third quarter 1887.
5	do	do	do	do	19	R. L. Owen; voucher 10, first quarter 1888.
6	do	do	do	do	18	R. L. Owen; voucher 16, second quarter 1888.
7	do	do	do	do	11	R. L. Owen; voucher 1, third quarter 1889.
8	do	J. B. Shoenfelt	Per capita payment	Chickasaw	4,659	J. B. Shoenfelt; voucher 182, fourth quarter 1903.
9	do	do	do	do	965	J. B. Shoenfelt; voucher 281, first quarter 1904.
10	do	do	do	do	558	J. B. Shoenfelt; voucher 338, second quarter 1904.
11	do	do	Town-site fund payment	Choctaw	16,512	J. B. Shoenfelt; voucher 1, fourth quarter 1905.
12	do	do	do	Chickasaw	5,378	J. B. Shoenfelt; voucher 2, fourth quarter 1905.
13	do	Dana H. Kelsey	do	Choctaw and Chickasaw	21	Dana H. Kelsey; voucher 443, second quarter 1906.
14	do	do	do	Mississippi Choctaws	1,234	Dana H. Kelsey; voucher 438, second quarter 1906.
15	do	do	do	Choctaw and Chickasaw	169	Dana H. Kelsey; voucher 429, second quarter 1906.
16	do	do	Per capita payment	Chickasaw	19	Dana H. Kelsey; voucher 467, third quarter 1906.
17	do	do	do	do	10	Dana H. Kelsey; voucher 525, fourth quarter 1906.
18	do	do	do	do	8	Dana H. Kelsey; voucher 398, first quarter 1907.
19	do	do	do	do	19	Dana H. Kelsey; voucher 372, second quarter 1907.
20	do	do	do	do	11	Dana H. Kelsey; voucher 290, third quarter 1907.
21	do	do	Town-site fund payment	Choctaw	18,267	Dana H. Kelsey; voucher 1, third quarter 1907.
22	do	do	do	Mississippi Choctaws	1,438	Dana H. Kelsey; voucher 2, third quarter 1907.
23	do	do	do	Chickasaw	5,990	Dana H. Kelsey; voucher 2, third quarter 1907.

List of rolls in the office of the Auditor for the Interior Department, showing payment by United States Indian agents to Choctaw and Chickasaw Indians for the period from July 1, 1874, date when the Union Agency was established at Muskogee, Ind. T. (now Oklahoma), to September 30, 1907—Cont'd.

No.	When prepared.	By whom prepared.	For what purpose prepared.	Tribe.	Number of Indians enrolled.	By whom and when paid.
24	Not shown	Dana H. Kelsey	Town-site fund payment	Choctaw and Chickasaw	166	Dana H. Kelsey; voucher 299, fourth quarter 1907.
25	do	do	Per capita payment	Chickasaw	7	Dana H. Kelsey; voucher 296, fourth quarter 1907.
26	do	do	Town-site fund payment	Chocktaw and Chickasaw	61	Dana H. Kelsey; vouchers 268 and 269, first quarter 1908.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 396.

BARBARA A. MELVILLE, ADMINISTRATRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF BARBARA A. MELVILLE, ADMINISTRATOR OF WILLIAM SHREVE, DECEASED, AGAINST THE UNITED STATES.

MARCH 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 17, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 12873. Barbara A. Melville, administrator de bonis non cum testamento annexo of William Shreve, deceased, v. The United States.]

STATEMENT OF CASE.

This is a claim for stores and supplies taken by the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 3871, Fifty-ninth Congress, first session.]

"A BILL For the relief of the estate of William Shreve, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the estate of William Shreve, deceased, late of Fairfax County, Virginia, the sum of three thousand dollars, for stores and supplies taken for the use of the United States Army during the late civil war."

The claimant appeared in this court on the 31st day of May, 1907, and filed her petition, in which it is substantially averred:

That she is the administratrix of William Shreve, deceased, late of Fairfax County, Va.; that at different times during the years from July, 1861, to July, 1865, various

commands of the United States Army, by proper authority, took from her decedent in said county and State and appropriated to the use of the Army large quantities of timber, rails, and hay, as follows:

65 acres of timber, 20 cords per acre, at $1 per cord	$1,300
60,000 rails, at $3 per hundred	1,800
12 tons of hay, at $15 per ton	180
Total	3,280

The case was brought to a hearing on loyalty and merits on the 13th day of January, 1908.

G. W. Z. Black, esq., appeared for the claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant's decedent, William Shreve, was not loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took from claimant's decedent in Fairfax County, Va., property of the kind and character described in the petition, which, at the time and place of taking, was reasonably worth the sum of eighteen hundred dollars ($1,800), no part of which appears to have been paid.

III. The claim herein was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the Senate, as hereinbefore set forth, and no reason is given why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed February 3, 1908.
A true copy.
Test this 17th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 397.

ADELAIDE L. SPALL, ADMINISTRATRIX.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF ADELAIDE L. SPALL, ADMINISTRATRIX OF GEORGE SANDS, DECEASED, AGAINST THE UNITED STATES.

MARCH 19, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 17, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Term 1907 and 1908. Congressional, No. 13093-16. Adelaide L. Spall, administratrix of George Sands, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference betweeen sea pay and shore pay while claimant's decedent was serving as an officer in the Navy of the United States upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 2d day of March, 1907, referring Senate bill No. 7301, for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 25th day of February, 1908.

Messrs. Coldren & Fenning appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes substantially the following allegations:

That he served as mate in the United States Navy on the receiving ship *New Hampshire*, and that during the period of such service he received shore pay and allowances instead of sea pay and allowances, to which he is entitled under the decision of this court and the Supreme Court of the United States in the case of United States *v.* Strong. (125 U. S., 656.)

That the difference between sea pay and shore pay, amounting to $504.54, is due to claimant, but that payment of same has been prohibited by the act of September 30, 1890.

The court, upon the evidence and report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. That claimant is a citizen of the United States and a resident of Stratford, Conn., and her intestate was the identical person who served as mate on the receiving ship *New Hampshire* from November 23, 1871, to July 10, 1873.

For said service claimant has been paid the shore pay and allowances of a mate, and no claim has ever been presented to the accounting officers of the Treasury for the difference between shore pay and allowances, which he has received, and sea pay and allowances, which he claims to be entitled to under the decision of the Supreme Court of the United States in the case of United States *v.* Strong (125 U. S., 656) had not Congress prohibited the payment of the same.

II. During the time claimant was attached to said receiving ship as aforesaid he had and was required to have his quarters and to mess on board said vessel, and was required to wear his uniform, and was not permitted by the rules of the service to live with his family.

III. The difference between the sea pay and allowances of a mate from November 23, 1871, to July 10, 1873, and the amount which claimant has received for his service during that period is five hundred four dollars and fifty-four cents ($504.54), no part of which has been paid.

BY THE COURT.

Filed March 16, 1908.
A true copy.
Test this 17th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 398.

REPORT ON CERTAIN INDICTMENTS FORMERLY FOUND AGAINST D. H. JOHNSTON, P. S. MOSELY, GEORGE MANSFIELD, J. F. McMURRAY, AND MELVIN CORNISH, AND LATER DISMISSED.

LETTER

FROM

THE ATTORNEY-GENERAL,

SUBMITTING,

PURSUANT TO SENATE RESOLUTION OF MARCH 3, 1908, A REPORT WITH REFERENCE TO CERTAIN INDICTMENTS FORMERLY FOUND AGAINST D. H. JOHNSTON, P. S. MOSELY, GEORGE MANSFIELD, J. F. M'MURRAY, AND MELVIN CORNISH, AND LATER DISMISSED.

MARCH 19, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., March 17, 1908.

SIR: By direction of the President I hereby submit a report on the subject-matter of the resolution of the Senate of the United States dated March 3, 1908, and received by me on March 4, 1908, with reference to certain indictments formerly found against D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, and later dismissed.

It appears from the records of this Department that about the 25th day of June, 1905, information was received that the firm of Mansfield, McMurray & Cornish, who had been the attorneys for the Choctaw and Chickasaw nations of Indians, and, as such, had resisted, on behalf of said nations, the applications of numerous persons for citizenship in the said tribes before the citizenship court, together with the governors of the said two nations, had been indicted for the alleged misappropriation of tribal funds by the grand jury of the southern district of the Indian Territory. This indictment had been found by the said grand jury under the advice of one W. B. Johnson,

then United States attorney for the said district. Soon afterwards the attention of the Department was called by the President to complaints that this indictment was not supported by the evidence submitted to the grand jury; that the grand jury itself, or some members thereof, were hostile to the defendants, and shared a prejudice against them prevailing among the white inhabitants of the Choctaw and Chickasaw territory and the adjoining district of Texas, arising from the fact that several thousand such persons had been foiled in attempts to procure their enrollment on the tribal rolls of the Indians in question through the efforts of the said counsel, at an estimated saving to the genuine Indians of some $15,000,000, and that the United States attorney had been actuated in his official conduct by personal enmity to the accused, arising mainly from the fact that they had replaced him as counsel for the said tribes of Indians. By direction of the President an inquiry was ordered into these charges and complaints, and Mr. Charles W. Russell, now Assistant Attorney-General, was ordered by Attorney-General Moody to conduct said inquiry.

It is suggested in the first paragraph of the resolution proper that Special Agent John S. Mosby, of this Department, had been instrumental in causing the said indictment to be found, but this appears to be a misapprehension, founded apparently upon his having investigated the charges against United States Marshal Benjamin H. Colbert, of that district, and certain other parties against whom indictments were found about the same time, and also to the fact that Mr. Mosby was then present in the Territory and informed of the proceedings before the grand jury. It does not at all appear from the records of the Department that he was authorized to act in any official capacity with regard to the subject-matter of the resolution now under consideration; he appears, however, to have believed the defendants guilty.

After a prolonged and very careful investigation Mr. Russell reported to the Attorney-General that, in his judgment, the indictment ought not to have been found, and ought to be dismissed, and on December 6 Attorney-General Moody directed the United States attorney for the southern district of the Indian Territory to dismiss the said indictment unless he had found some reason to the contrary since his return to the Indian Territory, he having previously visited Washington for consultation with the Attorney-General on this subject. On the same day Mr. Johnson telegraphed to the effect that he was expecting further information on the subject, and this information he sent on December 13 in a letter and telegram, of which I inclose copies, marked Exhibits "A" and "B." On December 17 he stated in another telegram that he was convinced of the guilt of the accused.

It is understood that the Department of the Interior desired the prosecution to be continued, and in view of this fact, and inasmuch as Mr. Johnson's term of office would expire within some six weeks, it was determined not to dismiss the indictments, but to cause a further investigation to be made by the succeeding United States attorney, Mr. George R. Walker, who was appointed on February 1, 1906. In the meantime—that is to say, on December 18, 1905—the President had directed the removal of Mr. Johnson, but on the same day revoked the order. The two announcements were made, in accordance with custom, through this Department, but the cause of the

action in each case is not disclosed by its records. Nothing further appears with respect to the case until on April 9, 1907, a report was received from Mr. George R. Walker, United States attorney for the southern district of the Indian Territory, a copy of which is herewith inclosed, marked "Exhibit C." As will be observed, this elaborate report concludes with the statement:

I therefore respectfully inform you that I am prepared to take the official and professional responsibility of dismissing the indictments, unless there is some fact known to the Department at Washington or some conclusion arrived at by the Department that has not occurred to me.

On receipt of this report I telegraphed Mr. Walker as follows:

Take no further action in prosecution against Mansfield and others until further instructed by Department.

Simultaneously I telegraphed to Mr. W. S. Gregg, a special assistant of this Department, then engaged in another investigation in the Indian Territory, to proceed as soon as possible to Ardmore, in order to investigate the case and make a full report thereon to the Department, and on the day following I addressed a letter to the Secretary of the Interior in the words following:

DEAR MR. SECRETARY: I inclose herewith a copy of United States Attorney Walker's letter in regard to the prosecution against Mansfield and others.

inclosing a copy of Mr. Walker's letter.

On May 1 the Secretary of the Interior wrote as follows:

DEAR MR. BONAPARTE: Referring to your letter of April 10, relative to the prosecution against Mansfield and others, I am clearly of the opinion, after conference with Mr. Leupp, that the case should be vigorously prosecuted despite the letter of the district attorney.

On the same day Mr. W. S. Gregg submitted his report, a copy of which is herewith transmitted, marked "Exhibit D." The concluding paragraph of this report, as will be noted from an examination of the said exhibit, was as follows:

In view of all the evidence presented to the grand jury, the allegations in the indictment, and after a careful examination of the books and papers of Mansfield, McMurray & Cornish, I have reached the conclusion that the Government could not hope to be successful in prosecuting the case to a final determination. As to whether or not additional evidence could be obtained upon a trial of the case is a question which it is impossible to determine at this time, but with the evidence now at hand, and with no prospects of obtaining anything in addition thereto, I feel confident that the facts do not justify a further prosecution on this indictment, and I have the honor to recommend that the United States attorney be directed to dismiss the proceedings.

On May 2 a copy of this report was forwarded to the Secretary of the Interior. On May 8 he replied as follows:

I inclose herewith a copy of a memorandum prepared in the Indian Office regarding the suit against D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish. Under the circumstances I think it will be necessary to abandon it.

A copy of the memorandum annexed to this letter is herewith inclosed, marked "Exhibit E," and, as will be noted, it concludes:

I have carefully analyzed Mr. Gregg's report and, in view of what is said therein, I am firmly convinced that the indictment should now be dismissed, and I so recommend.

On receipt of this letter, and after having consulted with the President personally, I wrote, as directed by him, on May 9, to Mr. Charles

Nagel, of St. Louis, asking if he would serve as special counsel to make an investigation of this case, advising the Department whether the prosecution should or should not be abandoned, and if, in his judgment, it should be pressed, conduct the trial on behalf of the Government. Mr. Nagel accepted this appointment, and was furnished, at his request, with all the papers on file in this Department, or in the Department of the Interior, bearing upon the question, and, under date of June 24, 1907, he submitted his report, a copy of which is herewith inclosed and marked "Exhibit F." An examination of this carefully prepared and thoroughly impartial review of the case presented by the documents will show that Mr. Nagel says:

Upon he whole, therefore, my conclusion is this: In so far as the indictment relies upon the bald circumstances that the acts of the Chickasaw Nation were not approved by the President, or that the expense accounts rendered by the attorneys were not properly itemized, the indictment can not, in my opinion, be sustained.

If I am to pass upon the remaining questions of fact in the light of the documents before me—that is, the testimony before the grand jury and Mr. Gregg's conclusions—then I also recommend the dismissal of the indictment.

This report was received by the Department on June 29, and on that day I acknowledged its receipt as follows:

I am in receipt of your very interesting report of the 24th instant, but have not yet had time to give it more than a hasty perusal. I will give it more careful consideration at the earliest opportunity, and will write you later.

A copy of Mr. Nagel's report was duly forwarded to the Secretary of the Interior on June 29. On September 5 a reply was received, inclosing a letter from the Acting Commissioner of Indian Affairs, copies of both of which communications are inclosed herewith, marked, respectively, Exhibits "G" and "H." By reference thereto it will be seen that the Indian Office says:

It is believed that no good purpose would be served by bringing to trial Mansfield, McMurray, and Cornish, and the others indicted with them, and it is therefore recommended that the Department of Justice be requested to instruct the proper United States attorney to dismiss the indictment.

It will also be seen that the Acting Secretary of the Interior says, "I concur in the recommendation that the indictment referred to be dismissed."

Notwithstanding the successive recommendations of Messrs. Russell, Walker, Gregg, and Nagel that the indictments in question be dismissed, and the approval of this recommendation by the Indian Office and the Department of the Interior, this Department held the question of such dismissal under advisement until November 13, 1907, when I sent the following telegram to Mr. Nagel:

Have decided to direct district attorney to secure dismissal of indictments against Mansfield, McMurray, and Cornish. Action taken after full consultation with authorities Interior Department.

On the same day I instructed Mr. Walker to dismiss the indictments, and, in the same telegram, called his attention to the importance of taking this action before the proclamation should be issued admitting Oklahoma to statehood, since the court in which the indictments were pending would be deprived of any jurisdiction over them, if action were delayed until after the Territory had become a State. On the day following, November 14, I was informed by a telegram from Mr. James E. Humphrey, assistant United States

attorney (Mr. Walker being absent), that the indictments had been dismissed.

I now submit a review, in detail, of the several paragraphs of the resolution and its preamble.

The first paragraph of the preamble of the said resolution is as follows:

Whereas it is alleged that on the twenty-fourth day of June, nineteen hundred and five, a grand jury of the United States of America, duly selected, summoned, impaneled, sworn, and charged to inquire fully in and for the body of the southern district of the Indian Territory in the name and by the authority of the United States of America, did, upon the oaths of the members thereof, find, present, and charge that one D. H. Johnston, one P. S. Mosely, one George Mansfield, one J. F. McMurray, and one Melvin Cornish, and others to the grand jurors unknown, on certain days in the year nineteen hundred and two, within the southern district of the said Indian Territory, did unlawfully and feloniously commit the crime of conspiracy to defraud (an offense against the laws of the United States) by defrauding the Chickasaw Nation out of the sum of twenty-eight thousand eight hundred and seventy-six dollars and ninety cents, the exact amounts fraudulently obtained from the Chickasaw Nation and the exact times and places where and when the said fraudulent transactions occurred being set out in said indictment.

The alleged statement embodied in this paragraph is substantially correct. The second paragraph of the said resolution is as follows:

And whereas it is alleged that on or about the fifteenth day of December, nineteen hundred and five, the Attorney-General of the United States did direct one W. B. Johnson, then United States attorney for the southern district of the Indian Territory, to dismiss, by entering a nolle prosequi in said case, the said indictment.

The alleged statement contained in this paragraph is inaccurate. On December 6, 1905, the then Attorney-General, Hon. William H. Moody, sent a telegram to W. B. Johnson, then the United States attorney for the southern district of the Indian Territory, in the words following:

Dismiss indictment of Mansfield, McMurray, Cornish, Johnston, and Mosely, unless you have, since your return, found some reason to the contrary.

The third paragraph of the said preamble is as follows:

And whereas it is alleged that the said W. B. Johnson refused to dismiss the said indictment as directed by the Attorney-General of the United States.

The alleged statement contained in this paragraph is likewise inaccurate. On December 6, 1905, the said W. B. Johnson replied to the telegram of the same date of the Attorney-General, as follows:

Your telegram this date directing dismissal case against Mansfield, McMurray, and Cornish, et al., received. Will await some information which has been unavoidably detained and then advise you.

On December 8 a telegram from Mr. Cecil A. Lyon to the President was referred to the Department of Justice. This telegram was as follows:

In spite report Attorney-General cases against Johnston, McMurray, et al. not dismissed Ardmore, Ind. T. Please so direct.

On December 10, 1905, the Attorney-General sent the following telegram to Mr. Johnson:

Information referred to in your telegram must be sent at once. Am anxious to end this matter. Answer.

In reply to this message two telegrams and a letter were sent explaining reasons for delay and furnishing some items of the prom-

ised information, and on December 17 the following telegram was received from United States Attorney Johnson:

From the evidence before grand jury I believed defendants guilty. The book and statements of defendants explained away our chief evidence of conspiracy, defendants claiming warrants delivered to Johnston in satisfaction of personal advancement. Statement of bank shows this claim untrue. Think evidence on hand will warrant conviction of all defendants.

The fourth paragraph of the above-mentioned preamble is as follows:

And whereas it is alleged that the Attorney-General of the United States on or about the fifteenth day of January, nineteen hundred and five, removed the said W. B. Johnson from office, said removal being by telegraphic communication, and said removal being based upon the refusal of the said W. B. Johnson to carry out the directions of the Attorney-General of the United States.

The alleged statement contained in this paragraph is likewise inaccurate. It is evidently unnecessary to call the attention of the Senate to the fact that the Attorney-General has no power to remove a United States attorney from office. The records of this Department, however, show that on December 18, 1905, the Attorney-General sent the above-mentioned W. B. Johnson, United States attorney as aforesaid, the following telegram:

The President has to-day removed you from office of the United States attorney for southern district of Indian Territory, to take effect immediately.

The fifth paragraph of the said preamble is as follows:

And whereas it is alleged that the said Attorney-General of the United States did, on or about the fifteenth day of January, nineteen hundred and five, by telegraphic communication, reinstate the said W. B. Johnson in the office of United States attorney for the southern district of the Indian Territory.

The alleged statement therein contained is likewise inaccurate. On December 18, 1905, the Attorney-General, by direction of the President, sent a second telegram to the said W. B. Johnson in the words following:

My telegram of to-day notifying you of removal from office of United States attorney is hereby canceled.

The records of this Department do not disclose the reasons of the President for causing either the first or the second of the above-mentioned telegrams to be sent.

The sixth paragraph of the said preamble is as follows:

And whereas it is alleged that the said W. B. Johnson refused and continued to refuse to dismiss the said indictment against the said persons during his term of office.

The alleged statement contained in this paragraph is inaccurate to this extent that, inasmuch as the above-mentioned W. B. Johnston, United States attorney, was never instructed to dismiss the indictment in question, except in a contingency which apparently did not arise, he did not and, indeed, could not "refuse to dismiss the said indictment;" but it is true that the said indictment was not dismissed during the remainder of his term of office, which ended on February 1, 1906, nor, I may add, was the said indictment dismissed until November 13, 1907, some twenty-one months after Mr. Johnson's successor had assumed office.

The seventh paragraph of the said preamble is as follows:

And whereas it is alleged that on or about the thirteenth day of November, nineteen hundred and seven, the Attorney-General of the United States did

send a telegram to the United States attorney for the southern district of the Indian Territory, one George R. Walker, directing him to "be sure" and dismiss the said indictment against the said persons "before the Territorial courts pass out of existence and the creation of the new State."

The alleged statement therein contained is substantially correct, although slightly inaccurate in language. On November 13, 1907, I addressed the following telegram to George R. Walker, esq., then United States attorney for the southern district of the Indian Territory:

Have decided to authorize dismissal of indictments against Mansfield, McMurray, and Cornish. Take appropriate action at earliest opportunity, and be certain that indictments are dismissed before statehood goes into effect.

The eighth paragraph of the said preamble is as follows:

And whereas it is alleged that on or about the fourteenth day of November, nineteen hundred and seven, the assistant United States attorney for the southern district of the Indian Territory (the United States attorney being absent at the time), one James E. Humphrey, did cause an order to be entered upon the records of the United States court for the southern district of the Indian Territory, sitting at Ardmore, dismissing the said indictment by the direction of the Attorney-General of the United States.

The alleged statement contained in the last-mentioned paragraph is substantially correct.

The first paragraph of the resolution itself is in the words following:

Therefore, be it

Resolved, That the Attorney-General of the United States be, and he is hereby, directed to transmit to the Senate a true and correct copy of the report of Special Agent J. S. Mosby, upon which report the said indictment was returned; the minutes of the grand jury and the documentary evidence presented to said grand jury; a true and correct copy of the indictment; all correspondence of every kind and description that has passed between the Department and the United States district attorney or attorneys and his or their assistant attorney or attorneys for the southern district of the Indian Territory; all correspondence of every kind and description between any officer, agent, or employee of the United States Government and any other person or persons whomsoever, pertaining or appertaining to said indictment.

I have the honor to say that there is no report of Special Agent J. S. Mosby relating to the indictment on file in this Department, and no such report was ever received. The said indictment was not returned upon such report, nor upon any report of any special agent of this Department, nor upon any report of any kind. It is again evidently unnecessary to call the attention of the Senate to the fact that indictments must necessarily be returned upon the testimony of witnesses produced before the grand jury which returns it. This Department has not in its possession the minutes or the documentary evidence presented to the said grand jury, and can not, therefore, furnish or transmit the same to the Senate. This Department has, however, a copy of the indictment found, and transmits herewith what it believes to be a true and correct copy of this document, marked "Exhibit I."

There is included in this report, or inclosed therewith, all correspondence between this Department and the successive United States attorneys for the southern district of the Indian Territory which is material or appropriate to the subject-matter of the said resolution. Such further correspondence on this subject as there is on the files of this Department relates mainly to the acknowledgment of communications or other matters of routine. This report contains the sub-

stance of all correspondence in the possession of this Department between public officers belonging to the Department and other persons which is material to the subject-matter of the said resolution and appropriate for transmission in accordance therewith.

The final paragraph of the said resolution is in the words following:

That the Attorney-General be, and he is hereby, directed to inform the Senate why said indictment was dismissed, whether upon insufficiency of law or fact, and particularly whether the facts alleged were in the form of documentary evidence, and the guilt of the defendants thereby established beyond question; and whether it is customary for the Attorney-General to interfere in the prosecution of persons against whom an indictment or indictments have been returned in the State or Federal courts of the country, and if so, by what authority of law; and whether other indictments of a similar nature have been dismissed by direction of the Attorney-General within the past five years, and if so, what indictment or indictments and the cause therefor.

With regard to this paragraph I have the honor to state that the reason for the dismissal of the said indictment appears from the present report and from the communications herewith inclosed from United States Attorney George R. Walker, Special Assistant W. S. Gregg, and Charles Nagel, esq., special assistant to the Attorney-General, all three of whom successively recommended the dismissal of the said indictment; that by "the facts alleged" I understand the resolution to mean the facts alleged in the said indictment, and the information of the Department on this subject is contained in the three reports lastly above mentioned and inclosed herewith, and in certain verbal reports made by Assistant Attorney-General Charles W. Russell, who made a careful investigation of the matter, as set forth in this report; and that, in the opinion of Messrs. Walker, Gregg, and Nagel, of Assistant Attorney-General Russell, and of the present Attorney-General, "the guilt of the defendants" was not "thereby," that is to say, by the evidence submitted to the grand jury, "established beyond question." On the contrary, the officers in question agreed in the belief that the indictment ought not to have been found, and that there was no hope of securing a conviction before an impartial jury.

I further respectfully report that it is customary for the Attorney-General to interfere in the prosecution of persons against whom an indictment or indictments have been returned in Federal courts of the country, and that it is not customary nor would it be possible for the Attorney-General, as such, to interfere in the prosecution of persons against whom an indictment or indictments have been returned in State courts of this country. The authority of law for such intervention by the Attorney-General is contained in the acts approved August 2, 1861 (12 Stat., 285), and June 22, 1870 (16 Stat., 164), and codified as United States Revised Statutes, section 362; and many indictments charging offenses against the United States have been dismissed under the authority of this Department within the past five years, but I deem it inappropriate to furnish a list of such indictments and the reasons for the dismissal of each, respectively, inasmuch as such information would appear to have no bearing upon the subject-matter of this resolution, and to furnish it would involve a very material loss of time and labor and considerable expense to the public.

I deem it appropriate to add that it appears from the records of this Department that on July 31, 1905, Mr. Charles W. Russell, now

Assistant Attorney-General, as above stated, sent to Hon. William H. Moody, then Attorney-General, a letter relating to this case, of which a copy is herewith forwarded, marked "Exhibit J;" that on September 29, 1905, Mr. Russell submitted to the Attorney-General a report, of which a copy is herewith forwarded, marked "Exhibit K;" that on October 14, 1905, this report was, by order of the Attorney-General, forwarded to Mr. W. B. Johnson, then United States attorney for the southern district of the Indian Territory, with instructions to make such comment thereon as he might deem appropriate; and that on October 20, 1905, Mr. Johnson sent a letter to the Attorney-General, a copy of which is herewith forwarded, marked "Exhibit L." Subsequently the said United States attorney was ordered to Washington for a personal conference with the Attorney-General, and, after said conference and his return to the Indian Territory, the telegram of December 6, 1905, was sent to him by this Department. I did not refer to these various documents in the narrative portion of this report, because they appeared to have no direct connection with the dismissal of the indictment in question on November 13, 1907; but, as they relate to the subject-matter of the resolution and are among the documents requested by its terms, it seems appropriate that copies of them should accompany this report.

It seems proper likewise that I should say that, while, as is hereinbefore set forth, the records of the Department do not disclose the reasons for the President's removal of United States Attorney Johnson on December 18, 1905, and his revocation of this order on the same day. I have official information that the first-mentioned telegram was sent under an impression, on the President's part, substantially to the same effect as the alleged statement contained in the third paragraph of the preamble to the resolution above mentioned, that is to say, that the said United States attorney had disobeyed the instructions of this Department, and his removal was by reason of such supposed act of disobedience, and that this erroneous impression having been removed through a personal explanation by the Attorney-General, the President later on the same day revoked the order in question.

Very respectfully submitted.

CHARLES J. BONAPARTE,
Attorney-General.

The PRESIDENT OF THE SENATE.

EXHIBIT A.

[Telegram.]

ARDMORE, IND. T., *December 13, 1905.*

Further reporting on Mansfield, McMurray, Cornish, et al. matter, verified statement cashier State National Bank, Denison, Tex., shows January 1, 1899, D. H. Johnston personally had on deposit less than $500. On May 17 account overdrawn; same June 3 and September 6. On May 20, same year, Johnston as governor had on deposit $30,000 to pay expenses per appropriation act; same date checked out $2,565; same date his personal account credited with that amount. Same

thing occurred June 12—$1,200. On December 6 account of governor had $34 on hand. During 1900 account governor had deposited about $7,000; all checked out same year. Nineteen hundred and one same account had deposited $2,000; checked out. In 1899 Johnston's individual account showed deposits $18,500; 1900, $42,000; 1901, $21,000. Salary as governor only $1,500 per annum; other income reported nominal. Claimed by attorneys during these years Johnston personally advanced money to defray expenses and took these warrants due them in lieu thereof. Think further investigation will show large deposits of Johnston were funds belonging to Chickasaw Nation. Will mail statement this date.

JOHNSON, *United States Attorney.*

The ATTORNEY-GENERAL,
Washington, D. C.

EXHIBIT B.

OFFICE OF UNITED STATES ATTORNEY,
SOUTHERN DISTRICT OF INDIAN TERRITORY,
Ardmore, Ind. T., December 13, 1905.

SIR: I herewith inclose you verified statements of the account of D. H. Johnston and also of D. H. Johnston, governor of the Chickasaw Nation, with the State National Bank, of Denison, Tex., verified by the cashier of that bank. These are the statements I have been having so much trouble in procuring.

I also inclose an act of the Chickasaw legislature appropriating $30,000, which sum was turned over to Governor Johnston on May 20, 1899. The act itself explains the purpose for which the appropriation was made. It will be observed that on the same date $2,565.75 was drawn from this fund, and also on the same date similar sums were credited to D. H. Johnston's account. On June 12, $1,200 of this amount was checked out, and on the same date the same amount was deposited to the credit of D. H. Johnston.

Beginning with January 1, 1899, D. H. Johnston deposited during that year $18,509.87. During the year 1900 he deposited $42,001.20. During the year 1901 he deposited $21,458.75.

It is a well-known fact that Governor Johnston did not have an income in any one of the three years mentioned equal to $5,000 per annum.

I feel confident that an examination of the Chickasaw treasurer's books and of the revenue accounts of said nation will show that the moneys thus deposited belonged to the Chickasaw Nation, and was not the individual money of Johnston.

It has been impossible for me in the time allotted and the opportunity afforded to make an investigation to learn definitely from what source he received this money. It will be remembered that the attorneys, Mansfield, McMurray & Cornish, admitted that Johnston received three Chickasaw warrants for $2,700 each, which should and did belong to them. The explanation offered by them was that the warrants were turned over to Johnston because he had personally advanced money to them to defray expenses incurred on behalf of the Chickasaws for an amount greater than the sum of the three war-

rants. The first item submitted by them was a check of $77.15, paid them by Johnston September 7, 1899. At that time the $30,000 had not been entirely used, and there was no reason why he should have paid these expenses out of his individual funds. The same may be said about other checks paid later.

I feel that it is unnecessary for me to go into details, because you will have an opportunity to examine the statements furnished, and nothing I can say will probably assist in arriving at a proper conclusion about this matter. I can not refrain from saying, however, knowing the financial condition of the parties and the surrounding circumstances, that I believe a more complete investigation would reveal the fact that the moneys used by the attorneys to cover alleged expenses did not belong to Johnston, but to the people of the Chickasaw Nation, and that when he received the three $2,700 warrants, which has been admitted, he was appropriating money to his own use that he had no right to. Nor have I changed my original opinion as to the guilt of these defendants. The book shown by them appeared to account for the three $2,700 warrants, but the investigation made convinces me that Johnston did not advance this money out of his private means. The other accounts were shown by the book to be regular, but as those statements rendered were so poorly itemized it is impossible to say that the expense was or was not incurred.

So far as I am concerned, this closes my investigation of the case, and it is for you now to determine what shall be done.

Very respectfully,

WM. B. JOHNSON,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

EXHIBIT C.

OFFICE OF UNITED STATES ATTORNEY,
SOUTHERN DISTRICT OF INDIAN TERRITORY,
Ardmore, Ind. T., March 29, 1907.

SIR: In the matter of the indictment for conspiracy pending in the United States court in the southern district of the Indian Territory against D. H. Johnston, P. S. Mosley, George Mansfield, J. F. McMurray, and Melville Cornish.

I have to report that since the date of my appointment, to wit, February 1, 1906, I have given earnest consideration to the indictment, the stenographic report of the evidence presented to the grand jury, the personnel of the grand jury finding the indictment, the personnel of the witnesses testifying before the grand jury, the motive, if any, of the witnesses in so testifying before the grand jury, the relations of the prosecuting witnesses to these defendants, the relations between the various members of the grand jury and these defendants, and the relations between these defendants and the public at large in the southern district of the Indian Territory.

For my guidance as to the law involved in this matter I prepared, with such assistance as I could procure in my office, a brief on the general law of conspiracy, a copy of which is herewith inclosed.

As to the facts and all of the facts to be relied upon and used in the trial of the case I was informed by the Secretary of the Interior that further information would be presented to me, and that Mr. William J. Burns, of the Secret Service, would be put in charge of such work as special assistant to me in the business of collecting all the evidence in existence touching these facts. I early consulted the local attorneys of these defendants in reference to their disposition to place at my disposal for personal examination the books, checks, accounts, contracts, etc., that were exhibited to the Department of Justice at Washington prior to my appointment, and was assured that all such books and papers would be brought to Ardmore for my examination upon request.

I then, from time to time, as I could spare it from my general duties in the management of a large criminal business which had to do with crowded dockets in eight court towns and with a large volume of new criminal business being continually ground out by eight grand juries, commenced to acquire by observation, absorption, and the processes of taking on information known to lawyers as understanding of the environment and the validity of this indictment.

I have written Mr. Burns several letters requesting him to make his investigations, as this case was on the Ardmore docket and could not be continued indefinitely from term to term.

During the past week I found that I had the time at my disposal for the personal consideration of the facts in this case and made a request of the local counsel for these defendants to furnish me for personal inspection all books, papers, checks, contracts, etc., that would throw any light upon the crime charged in the indictment. I examined the cash book of Mansfield, McMurray & Cornish, the original checks, numerous letters, contracts, and papers of every description. I then proceeded to the city of Denison, Tex., and with the assistance of the president and cashier of the State National Bank, of Denison, Tex., where defendant Johnston kept a bank account and upon which bank checks were drawn that cut some figure in the facts of the case, I made a careful examination of the books of the bank in relation to all transactions in question, examining the credit and debit accounts carefully, and considering these items in reference to their business relations and the information I had obtained from the cash book of Mansfield, McMurray & Cornish, and the checks exhibited by these defendants with the indorsements on the checks, and the books and accounts of Mansfield, McMurray & Cornish.

Upon the conclusion of these examinations of physical facts I arrived at the conclusion that it was my duty to report to you that it is unnecessary to make further delay and the ends of justice will be adequately met by the disposition of the indictment without hope of obtaining additional facts through the aid of Mr. Burns or secret service officers.

My conclusion is that the relations existing between these defendants and the public at large in the southern district of the Indian Territory deprive these defendants and each of them of a proper forum or tribunal in the courts of the southern district of the Indian

Territory. The adequacy of the United States courts in the southern district of the Indian Territory to properly try and dispose of criminal litigation has been questioned in the past. You remember about fourteen or fifteen years past the criminal cases of the southern district of the Indian Territory were tried at Fort Smith, Ark., and later, about twelve years since, were tried at Paris, Tex., shortly after which the jurisdiction to try criminal cases was passed over to the United States courts established by Congress in the southern district of the Indian Territory. These United States courts are well organized, with competent judges and officers, and have generally obtained as good results as could be expected from courts where the judges were not permitted to charge the jury upon the facts. The juries, grand and petit, do not seem to come quite up to the mark. They mingle southern prejudice, Indian tradition, and Masonry with a somewhat frontier-like recognition of the unwritten law, which is a broader proposition than is known to the eastern courts, and they need special guidance as to the facts submitted to them from the court. I am satisfied that when the judges in the southern district of the Indian Territory charge the juries orally upon the facts that the juries in the southern district will respond patriotically and fully perform their responsibilities.

My further conclusion is that the United States courts for the southern district of the Indian Territory not only do not furnish a forum for the determination of this criminal charge against these defendants, but that the charge itself is invalid. It was not made in good faith to the grand jury by the prosecuting witnesses. In fact, there was not sufficient evidence presented to the grand jury to warrant them in finding the indictment. The finding of the grand jury was too long a shot upon the record before the grand jury. The find- of the grand jury was not a good guess upon the slender information before the grand jury. There was not enough evidence before the grand jury to reasonably warrant the grand jury in finding that there was something before them that should be considered before a petit jury. The evidence of several of the witnesses who appeared before the grand jury was preserved by the stenographer, but it is to be observed that the evidence of defendant McMurray was not preserved for the use of the United States attorney who should try the case.

It appears from the statement of defendant McMurray and a letter of Mr. W. B. Johnston's to the Attorney-General that a statement was made to this grand jury that Mr. McMurray at the conclusion of his testimony before the grand jury in Ardmore would produce the books, papers, checks, etc., to substantiate his testimony, and permission was granted by the grand jury to Mr. McMurray to do so. Mr. McMurray did immediately send for such papers, books, etc., and had the same at the door of the grand jury room by the first train, but it appears that the grand jury had returned this indictment before Mr. McMurray could appear before them with the books and papers to enlighten the grand jury in reference to the charge of crime against these defendants. I am satisfied that if the grand jury had had the patience to examine the books, papers, checks, etc., in connection with Mr. McMurray's testimony they would not have brought in the indictment. I am very clear that no good purpose was served by the grand jury not fully complying, intentionally or unintentionally, with the request of defendant McMurray

that they examine and deliberately consider the books and papers used in the transactions before them.

The grand jury that found this indictment was organized May 22, 1905. On the 24th day of May, 1905, Farley Worsham, of Ardmore, was excused and Walter Colbert, of Ardmore, was sworn in. Prior to the presentation of the subject-matter of this indictment and on the 19th day of June, 1905, this grand jury was reorganized, and only seven of the original grand jurors were retained in the reorganization of the grand jury. The remaining nine members of the reorganized grand jury were citizens of Ardmore and two of the original members of the grand jury retained on the reorganized grand jury also lived in Ardmore, so that there were eleven residents of the city of Ardmore on the reorganized grand jury.

There was a public sentiment in the city of Ardmore against these defendants, to which I will refer later. I am informed that this grand jury was reorganized on June 19, 1905, so as to procure a grand jury that would fairly consider the charges to be preferred to it against ex-Marshal Colbert, and it was the investigation of the charges against ex-Marshal Colbert that was to be the chief business of the reorganized grand jury, and that the preferment of charges against these defendants named in this indictment for conspiracy was not anticipated by the grand jury and the officers of the Government, but was an outcrop of the hearing of the charges against ex-Marshal Colbert. The record before the grand jury has all the earmarks of such a conclusion, and, in fact, shows well enough an inadequacy of evidence touching the crime charged to these defendants. The haste and refusal of the reorganized grand jury to consider all the evidence and, in fact, as they must have known, the controlling evidence in reference to the wrongdoing of these defendants, gives to the transaction a color that puts me on my guard and causes me to halt.

In 1896 Congress conferred upon the Dawes Commission authority to pass upon and determine applications for citizenship in the Five Civilized Tribes.

The Chickasaw Nation employed to represent it in this controversy W. B. Johnson, who a short time thereafter was appointed United States attorney for the southern district of the Indian Territory, agreeing to pay him therefor a salary of $8,000 per annum. During the two years that Mr. Johnson represented the Chickasaw Nation there were admitted to citizenship in the Choctaw and Chickasaw nations, by judgments of the United States courts for the southern and central districts of the Indian Territory, on appeal from the Dawes Commission, about 4,000 persons, being about 95 per cent of all of those making application.

During the larger part of the time that Mr. Johnson represented the Chickasaw Nation his time was principally occupied in the discharge of his duties as United States attorney for the southern district of the Indian Territory, there being upon the dockets of the United States courts of this district a very large volume of criminal business. He employed to assist him Mr. Volney Johnson, a young attorney recently admitted to practice. This employment was without authority of the nation, but notwithstanding this fact, on request of Mr. W. B. Johnson, Mr. Volney Johnson was paid out of the funds of the tribes for his services $1,300. In addition to this

the Chickasaw Nation paid large sums of money to Gen. H. E. Payne and the Hon. Holmes Conrad, resident attorneys of Washington, D. C., who were employed at the instance of Mr. Johnson to represent the Chickasaw Nation in the citizenship cases appealed from the judgments of the United States court for the southern district of the Indian Territory to the Supreme Court of the United States.

The result of all this was the affirmance of the judgments of the United States courts and the enrollment as members of the Choctaw and Chickasaw tribes of the applicants, numbering about 4,000, admitted by these judgments.

The nations were dissatisfied with the results of the citizenship litigation as conducted by Mr. Johnson, which had terminated in the enrollment of this large number of applicants whom they regarded as fraudulent claimants. Accordingly the nations entered into a contract with Messrs. Mansfield, McMurray & Cornish to represent them in citizenship controversies other than those in which the judgments of the United States courts had become final, agreeing to pay them for such services an annual salary of $5,000 and expenses not exceeding $2,700 per annum.

It appears that in the discharge of their duties as such attorneys they became convinced that great wrong and injustice had been done these nations by the admission of these applicants by the United States courts, and advised the nations of this wrong, and that there ought to be, and that they believed they could find, a remedy.

Thereupon both nations employed the firm of Mansfield, McMurray & Cornish upon a contingent fee to represent them in having the judgments of the United States courts admitting these parties to citizenship vacated, if possible. Seeking a remedy for the wrongs believed to have been perpetrated by these judgments, the firm of Mansfield, McMurray & Cornish originated the idea that afterwards was expressed in sections 31 and 32 of what is known as the "Supplemental agreement," approved by the President July 1, 1902. It also appears that through the efforts of Mansfield, McMurray & Cornish the treaty containing these provisions was entered into between the tribes and the United States and ratified by act of Congress. This agreement contained the provisions creating the citizenship court and conferring upon it jurisdiction to review the judgments of the United States courts, and to decide the questions involved according to the real right of the matter in controversy. It also conferred upon the citizenship court the right to fix the fee of Mansfield, McMurray & Cornish for services rendered in the citizenship cases pending in that court. It also appears that from the time of the employment of the firm of Mansfield, McMurray & Cornish they had the practical control of the administration of the entire affairs of the two tribes. They not only had control of the legal affairs of the two tribes, but of the financial and business affairs.

After the employment of the firm of Mansfield, McMurray & Cornish no other attorney was ever retained or paid by either of the nations for services on their behalf, either at home or in Washington.

For a number of years previous to the employment of Mansfield, McMurray & Cornish the tribes had been unable to collect any of the tribal taxes assessed against the merchants, cattlemen, farmers, etc., in the Choctaw and Chickasaw nations. After the employment of Mansfield, McMurray & Cornish as attorneys for the nations, they

took up the enforcement of this tribal tax, with the result that much litigation ensued, and much ill-feeling was engendered against them on the part of those persons who resisted the payment of the taxes. The final results of the efforts of Mansfield, McMurray & Cornish were the enforcement of the payment of all tribal taxes in favor of both nations and the payment into the treasuries of the two nations of several hundred thousand dollars from this source, the reviewing of all the judgments of the United States courts in citizenship matters, and the rendition of judgments eliminating from the tribal rolls the claims of between 3,000 and 4,000 persons, thereby saving to the members of the tribes about $30,000,000.

The amounts involved in all these transactions are enormous, the scope of country necessarily covered very extensive (being about 150 to 200 miles), the expenditures were necessarily large, and the results achieved all that could have been expected. The matter is well summed up by Judge Anderson, of the supreme court of the District of Columbia, in the case of McLish *v.* Shaw et al.:

> Something has been said here about the defense of these attorneys—that they were looking out for themselves, and by the character of their defense against the claimants of these fraudulent claims selfishly seeking to broaden the basis of their own compensation. In the judgment of the court it is a commendable thing in a lawyer to always and under all circumstances do the best he can for his client, and on the other hand, it is the proper and just thing in the client to fully recognize the services of his attorney and duly compensate him therefor. When these men were striking down the claims of these fraudulent claimants one after another until 4,000 had been felled before the attack made upon them, they added that much to the aggregate that would remain for those whom the court found were entitled to it. While it had the effect of broadening the basis of their fees, it also had the effect of correspondingly increasing the per capita distribution of the fund that stayed among their clients. * * *
>
> Here were 4,000 men clamoring to get their hands into the Treasury of the United States, and these defendant attorneys representing their claims said, "They are not entitled to a dollar. These claims are frauds. They are not citizens of either one of these nations." They proceeded, as it was their duty to do, to investigate before that court, and unearth fraud and disclose it to the court wherever they could find it. The services rendered were valuable, as may well be appreciated when it is considered that they saved $15,000,000 or $20,000,000 to their clients.
>
> So far as the reasonableness of this compensation is concerned, I agree with the Assistant Attorney-General, that this is not a matter before this court. If it were, and I were called upon to pass upon that question, either as a court or as a juror sitting to try that question, I do not hesitate to say that in the light of the facts now before the court I would have no difficulty in concluding that the fees allowed were in every way reasonable.

A careful consideration of this case disclosed the fact that the particular expenditures that are the basis of this indictment were involved in that controversy, and that the opinion and judgment of Judge Anderson in that case was to some extent a judicial determination of these matters in favor of the contention of Mansfield, McMurray & Cornish.

The indictment in this case is supposed to be based upon the payment of certain moneys as expenses to the firm of Mansfield, McMurray & Cornish. I find nowhere in this record any evidence of any character to justify the finding of the indictment in this case, or to justify the continuance of this case upon the docket of the court.

It is very difficult, indeed, in view of these facts, to see upon what theory the indictment in this case was returned. I am informed, however, as I have before stated, that this explanation was not made

before the grand jury. That when Mr. McMurray was brought before the grand jury he was asked if he had books, papers, etc., that would explain his dealings with the nations and the payment of his expenses, and to confirm his statements with reference thereto, and that he advised Mr. Johnson in the presence of the grand jury that he had, and that he would produce them as quickly as he could telephone to South McAlester and have them brought to Ardmore. That thereupon the grand jury and Mr. Johnson agreed to wait until these books and papers could be secured from South McAlester, and that they would then take up the case again on the following Monday. That notwithstanding this agreement an indictment was returned the same evening, after Mr. McMurray had arranged to have the books here on the following Monday morning. The books were brought to Ardmore by Mr. Cornish, as per the agreement, on that very day, arriving at midnight on the first train after the agreement was made.

In view of this condition of affairs, the reason for the returning of this indictment and the motive prompting those active in securing and returning the same, become a matter of grave concern. In this connection it may be well to consider that the employment of Messrs. Mansfield, McMurray & Cornish deprived Mr. W. B. Johnson, who continued to hold the office of United States attorney, of an income of $8,000 per annum. Not only this, but a comparison of the results obtained by Mr. Johnson while acting in the capacity of attorney for the Chickasaw Nation with those obtained by his successors, Messrs. Mansfield, McMurray & Cornish, was such as to probably embarrass those among the members of the Chickasaw tribe who were instrumental in securing Mr. Johnson's employment. It may also be well to consider that Ardmore was the center of the tribal tax agitation; that it was the headquarters of the organization whose purpose it was to resist the payment of tribal taxes. Many, if not all, of the merchants of Ardmore had contributed to pay the expenses of instituting and maintaining injunction suits to restrain the collection of these taxes. A number of the merchants of Ardmore had had their stores closed because of their refusal to pay these taxes. The practically unanimous opinion among the business men was that the enforcement of these taxes was an outrage to be resisted by any lawful means; that the collection of these taxes was little less than highway robbery. With practically all of the merchants of Ardmore thoroughly impregnated with this idea and with the majority of the grand jury selected from among these merchants, it is less difficult to arrive at a conclusion as to the reason why the grand jury was prompt in returning this indictment.

There is puerility in the thought that Mansfield, McMurray & Cornish would steal expense money when they and the Indians were all of the time short of expense money and when they had a valid and legal contract entitling them to 10 per cent of the results to be ultimately achieved in their undertaking. The grand jury were in grave error in assuming that Mansfield, McMurray & Cornish, at any stage of this gigantic undertaking, would sit down and play "craps" with any of this expense money and thereby embarrass and delay, possibly destroy, the success of their undertaking, which meant millions of dollars for the Indian tribes and 10 per cent thereof as a reward for Mansfield, McMurray & Cornish.

If the owner of a valuable fee in land should employ an architect or a contractor to put a structure thereon, and the owner had only a small amount of cash to cover the necessary expenses and accordingly should engage to give to the architect or contractor a small salary for services and a contingent interest in the proceeds of the sale of the land and the building erected thereon, it is not fair to assume that the architect or contractor would be content with the misappropriation or embezzlement of the paltry expense money in the hands of a substantially bankrupt owner. It is to be assumed, however, that the owner and the architect would husband all their time, get together all of their limited resources, and devote all their energies and all their little moneys so that the project might be achieved and the reward secured for the enrichment of a practically bankrupt owner and a practically bankrupt architect or contractor. It is not fair to assume that Governor Johnston and Governor Mosley, of the Indian tribes, and Mansfield, McMurray & Cornish were devoting themselves to the dissipation of such trifling sums of money when by the proper use and application of such money and large sums of money borrowed by Mansfield, McMurray & Cornish on their own personal credit, a great prize could be won for the Indian tribes and 10 per cent of which then became the property of Mansfield, McMurray & Cornish.

Like the Johnson grass in Texas, of which a Nestor farmer told me on the train on my return from the Denison Bank, where I found a mare's-nest. The Johnston grass, with the muscular roots that the farmer described, threatens to spread over the State of Texas and conquer all opposing vegetation there. So I then thought and now state the fact to be that, like the Johnson grass in Texas, the foregoing conclusion spreads its way over this record and strangles every fact opposing it.

This case can not be won. It ought not to be won. There is but one victory for the Government in the premises. That is in the immediate dismissal of the indictment.

I do not wish to be understood in the foregoing as tendering any criticism of Mr. W. B. Johnson, my predecessor in office.

I therefore respectfully inform you that I am prepared to take the official and professional responsibility of dismissing the indictment, unless there is some fact known to the Department at Washington, or some conclusion arrived at by the Department that has not occurred to me.

Very respectfully,

GEORGE R. WALKER,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

EXHIBIT D.

DEPARTMENT OF JUSTICE,
Washington, May 1, 1907.

SIR: In obedience to the instructions contained in your confidential letter of April 9, 1907, directing me to investigate the facts upon which the indictment in the case of The United States *v.* D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, pending in the southern district of the Indian Territory,

charging a conspiracy to defraud the Chickasaw Nation out of certain funds, is predicated, I have the honor to submit the following report of the result of my investigation:

I proceeded to Ardmore, in the southern district of the Indian Territory, and requested the United States attorney, Mr. George R. Walker, to place at my disposal for examination all of the records of that case, which he did. I first took up the indictment and went through carefully all of the testimony, which appears of record, presented to the grand jury at the time this indictment was returned. It appears from the records that only a portion of the testimony before the grand jury was reported. It appears that Mr. McMurray, one of the defendants, appeared before the grand jury and testified, but his testimony does not appear to have been reported.

It further appears that when the investigation was instituted before the grand jury it was the intention of Mr. W. B. Johnson, who was at that time United States attorney, to inquire into the facts concerning the failure of the bank of the Chickasaw Nation, located at Tishomingo, Ind. T., which had become insolvent. However, during the progress of the investigation before the grand jury, evidence was produced which tended to show that Mansfield, McMurray & Cornish, who were at that time attorneys for the Chickasaw Nation, and D. H. Johnston, governor of the Chickasaw Nation, and P. S. Mosely, formerly governor of said nation, had conspired together to defraud said nation out of certain funds.

The indictment against Mansfield, McMurray & Cornish et al. is predicated upon the testimony of Richard McLish, formerly auditor of public accounts of the Chickasaw Nation; that of William T. Ward, formerly treasurer of the Chickasaw Nation, and that of D. H. Johnston, governor of the Chickasaw Nation. If there was any additional evidence before the grand jury against these defendants, it does not appear of record.

The principal allegations in the proceedings against Mansfield, McMurray & Cornish are as follows:

1. That Mansfield, McMurray & Cornish conspired with D. H. Johnston, the governor of the Chicksaw Nation, and P. S. Mosely, formerly governor of the Chickasaw Nation, to have passed by the Chickasaw legislature acts authorizing the expenditure of money, which acts were not submitted to the President for his approval.

2. That Mansfield, McMurray & Cornish received payments for salary and expenses under these acts.

3. That certain warrants for salaries and expenses that were issued in favor of Mansfield, McMurray & Cornish were indorsed over to D. H. Johnston, the governor of the Chickasaw Nation, by the said Mansfield, McMurray & Cornish.

4. That Mansfield, McMurray & Cornish presented accounts for fees and expenses to the Chickasaw Nation, which accounts were approved by the governor of said nation, when they were not entitled to such salary and expenses.

I.

It is alleged that Mansfield, McMurray & Cornish conspired with D. H. Johnston, governor of the Chickasaw Nation, and P. S. Moseley, formerly governer of the Chickasaw Nation, to have passed by the Chickasaw legislature certain acts authorizing the expenditure

of money, which acts were not submitted to the President for his approval.

It does appear that acts authorizing the governor of the Chickasaw Nation to make expenditure of funds for the benefit of said nation were passed by the Chickasaw legislature and that certain of said acts were not submitted to or approved by the President.

The first of these acts passed the house and senate of the Chickasaw legislature in September, 1899, and was approved by the governor of said nation on September 20, 1899. There is nothing in the records to show whether or not this act was submitted to the President for his approval.

The act is as follows:

AN ACT Approving the contract of Mansfield, McMurray and Cornish for legal services, and making appropriation therefor.

Whereas on July twentieth, eighteen and ninety-nine, Douglas H. Johnston, governor of the Chickasaw Nation, on the part of the Chickasaw Nation, entered into a contract with Mansfield, McMurray and Cornish, attorneys at law, to represent the Chickasaw Nation in all matters of citizenship now pending before the Dawes Commission, the Secretary of the Interior of the United States, and the United States courts, to the final completion and approval of the rolls of the Chickasaws; said contract to be subject to be annulled by the legislature of the Chickasaw Nation after two years from the date thereof;

Whereas it is provided in said contract that the said Mansfield, McMurray and Cornish are to receive, as compensation for such legal services, the sum of five thousand dollars per annum, together with their actual and necessary expenses incurred in the performance of such services, and such expenses to be rendered in duly verified accounts to the governor of the Chickasaw Nation, on the twentieth of each month, to be certified by him for payment, as provided by the terms of said contract; and

Whereas in the trial of contested cases of those claiming Chickasaw citizenship before the Dawes Commission and the Secretary of the Interior, and in certain proceedings now pending and to be instituted in the United States courts in connection with citizenship matters, it will be necessary to incur expenses in the way of witness fees, mileage, court costs, and so forth: Therefore,

Be it enacted by the legislature of the Chickasaw Nation,

SECTION 1. That the said contract entered into on July the twentieth, eighteen hundred and ninety-nine, between Douglas H. Johnston, governor of the Chickasaw Nation, on the part of the Chickasaw Nation, and Mansfield, McMurray and Cornish, is hereby ratified and approved.

SECTION 2. That an appropriation is hereby made therefor out of any funds belonging to the Chickasaw Nation not otherwise appropriated, and the auditor of public accounts of the Chickasaw Nation is directed to issue his warrants on the treasurer of the Chickasaw Nation for such salaries and expenses, including traveling expenses, clerical assistance, postage and stationery of attorneys, per diem and mileage of witnesses, court costs, and such other items of expense as may be incurred in the performance of such services, shall not exceed the sum of twenty-seven hundred dollars per annum.

SECTION 3. That this act shall take effect and be in force from and after its passage and approval by the President of the United States.

Recommended by C. D. Carter.

Passed the house this September 19, 1899.

JOE NEWBERRY,
Speaker of the House.

Attest:
J. W. GREENWOOD,
Clerk of the House.

Passed the senate this September 20, 1899.

DAVE SEELY,
President of the Senate.

Attest:
J. W. BYRD,
Secretary of the Senate.

Approved September 20, 1899,

D. H. JOHNSTON,
Governor Chickasaw Nation.

It will be observed that this act approved a contract entered into by Douglas H. Johnston, the governor of the Chickasaw Nation, with Mansfield, McMurray & Cornish, attorneys at law, to represent said nation in all matters of citizenship pending before the Dawes Commission, Secretary of the Interior, and the United States courts, and for the final completion and approval of the rolls of the Chickasaws. Under the terms of said contract Mansfield, McMurray & Cornish were to receive as compensation for legal services the sum of $5,000 per annum, together with their actual and necessary expenses incurred in the performance of said services, with the further provision that the expenses incurred in this connection should not exceed the sum of $2,700 per annum.

The second act, under which salary and expenses were paid to Mansfield, McMurray & Cornish, passed the Chickasaw legislature on October 26, 1900, and was on the same day approved by D. H. Johnston, the governor of the Chickasaw Nation. There is nothing in the records to show that this act was submitted to the President for his approval.

The act provides as follows:

AN ACT To provide for regular and necessary expenses to protect the interest of the nation, and directing payment of the same out of the contingent fund of the governor.

Whereas past experience has shown that regular and necessary expenses must be provided for protecting the interest of the nation in the various matters that arise from time to time, such as court costs, witness fees, and other expenses of litigation, traveling expenses, postage, stationery, and so forth: Therefore,

Be it enacted by the legislature of the Chickasaw Nation, the governor is authorized to incur such expenses, including the items above mentioned, and to pay the same out of his contingent fund, and an appropriation therefor in addition to the amount now fixed by law is hereby made to be so used and expended, if in his judgment the same shall be necessary, and such expenses as shall be or have been incurred, under the direction of the governor, shall be rendered in itemized accounts, and upon his approval thereof the national auditor shall draw his warrant therefor and the national treasurer shall pay the same, and such account shall be retained by the governor as vouchers for such expenditures out of his contingent fund for the information of the legislature, and this act shall take effect and be in force from after its passage and approval.

Recommended by R. H. Colbert.
Passed the house this October 26, 1900.

L. V. COLBERT,
Speaker of House.

Attest:
T. W. GREENWOOD,
Clerk of House.

Passed the senate this October 26, 1900.

W. M. GUY,
President of Senate.

Attest:
WYATT CHIGLEY,
Secretary of Senate.

Approved this October 26, 1900.

D. H. JOHNSTON,
Governor of the Chickasaw Nation.

Attest:
B. H. COLBERT,
National Secretary.

It will be observed from this act that the governor was authorized to incur expenses, including court costs, witness fees, and other expenses of litigation, traveling expenses, postage, stationery, etc., and

to pay the same out of his contingent fund, and an appropriation was made therefor in addition to the amounts theretofore fixed by law, if in the judgment of the governor it should be necessary to make such expenditures.

In the agreement of the Commission to the Five Civilized Tribes, with the Commission representing the Choctaw and Chickasaw Indians, of April 23, 1897, which was ratified by Congress on June 28, 1898, will be found the following provision concerning the submission of the acts, ordinances, or resolutions passed by the council of either of said tribes to the President of the United States for his approval.

The provision is as follows:

> It is further agreed that no act, ordinance, or resolution of the council of either the Choctaw or Chickasaw tribes in any manner affecting the land of the tribe or of the individuals after allotment, or the moneys or other property of the tribe or citizens thereof (except appropriations for the regular and necessary expenses of the government of the respective tribes), or the rights of any persons to employ any kind of labor, or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States. When such acts, ordinances, or resolutions passed by the council of either of said tribes shall be approved by the governor thereof, then it shall be the duty of the national secretary of said tribe to forward them to the President of the United States, duly certified and sealed, who shall, within thirty days after their reception, approve or disapprove the same. Said acts, ordinances, or resolutions, when so approved, shall be published in at least two newspapers having a bona fide circulation in the tribe to be affected thereby; and when disapproved shall be returned to the tribe enacting the same. (30 Stat., 512.)

It will be observed that in this provision certain acts, ordinances, and resolutions are not required to be submitted to the President. The exception reads as follows: "Except appropriations for the regular and necessary expenses of the government of the respective tribes." It is claimed that the officials of the Chickasaw Nation did not deem it necessary to present the acts making appropriation for expenditures for legal services and other actual expenses to the President for his approval, in view of the exception heretofore noted. As to whether or not acts of that character come within the purview of the exception is a question which the Government is now seeking to have determined through the institution of civil suits to recover the amount of expenditures made under acts of that character.

The indictment charges that Mansfield, McMurray & Cornish, and Johnston and Moseley conspired to defraud the Chickasaw Nation by not submitting legislation of that character to the President for his approval, but I have been unable to discover any evidence to prove the allegation that these men conspired to prevent such legislation being submitted to the President for his approval and with a view to defrauding said nation. If such conspiracy existed there has been no evidence presented up to the present time to establish the conspiracy.

II.

It is alleged that Mansfield, McMurray & Cornish received payments for salary and expenses under acts of the Chickasaw legislature which had not been submitted to the President for his approval.

There is no question but that disbursements were made to Mansfield, McMurray & Cornish under acts of this character, and these defendants make no attempt to conceal this fact, but frankly admit it.

III.

It is alleged that certain warrants for salaries and expenses that were issued in favor of Mansfield, McMurray & Cornish were indorsed over to D. H. Johnston, the governor of the Chickasaw Nation, by the said Mansfield, McMurray & Cornish.

Upon completion of my investigation at Ardmore I proceeded to South McAlester and had an interview with Mr. Cornish, and asked him if he was willing to place at my disposal for examination their books and papers showing their transactions with the Chickasaw Nation. He replied that he would be glad to submit them for such purpose, and did place them before me for examination.

With respect to the above allegation in the indictment, I found upon an examination of the books and papers of Mansfield, McMurray & Cornish that warrants issued in their favor by the treasurer of the Chickasaw Nation for salary and expenses had, in certain cases, been turned over to D. H. Johnston, the governor of the Chickasaw Nation. Their books and papers show, however, that D. H. Johnston had, at various times, advanced to them out of his personal account funds to defray expenses in connection with matters arising involving the Chickasaw Nation, and that subsequently, when warrants were issued to Mansfield, McMurray & Cornish for fees and expenses, they indorsed the warrants over to Johnston to reimburse him for advances he had made to them. Mansfield, McMurray & Cornish have the checks and drafts which passed through the banks, showing that Johnston had advanced such funds to them, and the amounts and dates of those checks and drafts correspond to the amounts of the warrants which they indorsed over to Johnston when said warrants were issued by the treasurer of the Chickasaw Nation. Their books, checks, and drafts concerning these transactions correspond to the allegations in the indictment. I do not believe there is any question but that Mansfield, McMurray & Cornish at that time were short of funds, and that occasions were arising in connection with matters involving the Chickasaw Nation which necessitated the immediate expenditure of money. In any event, the records do not show that Mansfield, McMurray & Cornish converted to their own use any funds paid to them by the Chickasaw Nation, except what they received as salary and fees. Their books show in detail their expenditures from the time of their appointment as counsel for the Chickasaws down to the present time.

IV.

It is alleged that Mansfield, McMurray & Cornish presented false and fraudulent accounts for salary and expenses to the Chickasaw Nation, which accounts were approved by the governor of said nation.

Their books, checks, and other papers show that they did render services and incur expenses in connection with the amounts alleged in the indictment as having been paid upon false and fraudulent accounts. I went over carefully their books relating to these expenditures. Of course, it was practically impossible for me to tell in each and every case whether the expenditure was reasonable, but in those cases where they had charged for railroad fare, hotel accom-

modations, stationery, etc., I considered the charges to be reasonable. There are hundreds of items of expenditures shown by their books, and from the vast amount of work done by this firm for the Chickasaw Nation, I have every reason to believe that the legal services were rendered and that the expenses were incurred.

In connection with certain expenses incurred by them and alleged in the indictment, Mr. Cornish frankly admitted, and their books show, that they did expend some money in connection with the election to ratify the agreement referred to in section 29 of the act of Congress of June 28, 1898 (30 Stat., 495); that they had in certain cases incurred expenses for special trains to convey voters from remote parts of the nation to the election, and that they did pay the expenses of these voters going to and from the election. It is a question whether or not this was a wise and judicious expenditure of money. But there is no evidence to prove, so far as I have been able to ascertain, that Mansfield, McMurray & Cornish converted any of the funds, which their books show as having been expended in that manner, to their own use or benefit.

CONCLUSION.

The district attorney, Mr. Walker, in his recommendation that the indictment be dismissed, dwells to a large extent upon the results obtained by Mansfield, McMurray & Cornish, while attorneys for the Chickasaw Nation. It certainly must be conceded that they did save millions of dollars for the Chickasaw Nation by the institution and prosecution of hundreds of cases for the purpose of dispossessing fraudulent claimants and in other matters, but in my investigation of the facts upon which the indictment is predicated I did not take this matter into consideration in any way, as it seems to me that the sole question to be determined at this time is whether or not these defendants conspired to defraud the Chickasaw Nation out of the funds alleged in the indictment, regardless of what they may have accomplished for the nation.

I have every reason to believe that if Mansfield, McMurray & Cornish would have been permitted to present their books and papers to the grand jury for the purpose of explaining their transactions with the Chickasaw Nation that body would not have returned an indictment upon the evidence presented. It appears that McMurray was before the grand jury, although his testimony does not appear of record. It further appears that he requested Mr. W. B. Johnson, who was then district attorney, to withold the returning of the indictment until he could send to South McAlester for their books and papers. This was agreed to by Mr. Johnson, and Mr. McMurray at once called up Mr. Cornish over the long-distance 'phone and requested him to bring all their books and papers relating to matters involving the Chickasaw Nation to Ardmore at once. This was on Saturday morning, and Mr. Cornish at once left for Ardmore, taking with him all their books, papers, etc., concerning the matters which the grand jury was investigating, and arrived at Ardmore at 12 o'clock that night. But it appears that the grand jury had returned the indictment at 4 o'clock in the afternoon. These men did not, therefore, have an opportunity to present any documentary evidence before the grand jury to make a thorough explanation before that body.

There is another phase of this case to be kept in mind, and that is that W. B. Johnson, who was United States attorney at the time the indictment was returned, was, up to the time of the employment of Mansfield, McMurray & Cornish, attorney for the Chickasaw Nation at a salary of $8,000 per annum. As to whether or not that had anything to do with the finding of the indictment, without any opportunity being given to the defendants to make a thorough explanation, which had been agreed to by the district attorney, I am unable to say, but all the circumstances tend to show that Johnson was not exceedingly anxious to give McMuray an opportunity to make a full and complete explanation before the grand jury.

In view of all the evidence presented to the grand jury, the allegations in the indictment, and after a careful examination of the books and papers of Mansfield, McMurray & Cornish, I have reached the conclusion that the Government could not hope to be successful in prosecuting this case to a final determination. As to whether or not additional evidence could be obtained upon a trial of the case is a question which it is impossible to determine at this time, but with the evidence now at hand, and with no prospect of obtaining anything in addition thereto, I feel confident that the facts do not justify a further prosecution on this indictment, and I have the honor to recommend that the United States attorney be instructed to dismiss the proceedings.

Very respectfully,

W. S. GREGG.

The ATTORNEY-GENERAL,
Washington, D. C.

EXHIBIT E.

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR.

Some days ago I made a memorandum with reference to this subject for Commissioner Leupp. I did not keep a copy of it, but as I recollect it I took the position that it was not a question as to whether these men could be convicted, but as to the duty of the Government in the premises, in view of the fact that they had been indicted and that the indictments ought not to be dismissed unless you and the Attorney-General were satisfied that the grand jury which indicted them was packed against them.

The report of Mr. Gregg is clear and seems to cover the case in its entirety, and it puts an entirely different phase thereon. It shows (1) that the circumstances under which the indictment was obtained were not, to say the least, in keeping with good criminal practice; (2) that the evidence introduced was not sufficient to warrant the grand jury in finding a true bill; (3) that the evidence that the Government now has is undoubtedly insufficient to justify a conviction if the indicted persons are tried; and (4), most important of all, that not one penny of the money supposed to have been misused reached the pockets of Mansfield, McMurray & Cornish. This being true, the indictment and charge of conspiracy would fall from its own weight.

You now have had the recommendation of United States Attorney Walker and that of Mr. Gregg, who it seems from his report gave

the case, with all the evidence and everything relating thereto of which he could secure possession, a careful, painstaking, and thorough investigation, that the indictments be dismissed. I have carefully analyzed Mr. Gregg's report, and, in view of what is said therein, I am firmly convinced that the indictments should now be dismissed, and I so recommend.

G. A. W.

MAY 4, 1907.

EXHIBIT F.

ST. LOUIS, *June 24, 1907.*

MY DEAR MR. BONAPARTE: In obedience to the instructions contained in your letter of May 9, I have carefully examined all the documents that have been forwarded to me from your Department and from the Department of the Interior. I find that in a good many instances I have been furnished duplicates; that some of the papers do not appear to refer to the immediate question presented, and that in other cases documents, while referring to the general inquiry, have no immediate bearing upon the decision which I am asked to make. Even so, a considerable volume remains for the careful examination, which I have endeavored to make.

I find, among other things, that it has been the evident purpose of the prosecution to impress the authorities with the fact that the defendants have been guilty of different kinds of misconduct, and have in many ways taken advantage of the Indians; and that for these reasons the prosecution ought to be insisted upon. I find, also, that the defendants have endeavored to cast doubt upon the impartiality of the prosecution, claiming that the former district attorney had himself been guilty of conduct not unlike that which is now charged in the indictment; that he was prejudiced, and that some of the members of the grand jury were likewise actuated by a feeling of resentment, to be attributed to litigation which the firm of Mansfield, McMurray & Cornish had instituted for the Indians against them.

My first conclusion is, that while circumstances of this kind may ultimately be of value in determining the weight of evidence, they can not be conclusive in deciding whether or not the prosecution ought now to be proceeded with.

I have therefore assumed that an answer to your inquiry calls for a decision, first, as to the sufficiency of the indictment; second, if the indictment is sufficient, then as to the sufficiency of the evidence to give it support. Proceeding with the questions in that order, I confess to some hesitancy in undertaking to answer the first one. My experience in the practice of the criminal law is extremely limited, and I am therefore not really able to cope with the technical questions which the form of the indictment may present. I do feel at liberty, however, to say that the form of the indictment does not impress me favorably. It appears to be hastily drawn, charging both governors with conspiracy throughout, regardless of the terms for which they served. Beyond that, the indictment charges the collection of Indian funds upon fictitious demands; but it does not set out

the offense with any degree of particularity. It appears in the main to rely upon the charge that the issuing of the warrants was improper, because the contracts under which the attorneys proceeded were made in pursuance of acts that the President had not approved, and because the warrants were issued and paid upon insufficiently itemized accounts. Without undertaking at this time to finally pass upon this feature of the case, I will say that it does not inspire me with confidence.

This brings me to the second question, in which I believe you to be more especially interested, certainly so far as my participation in its settlement may go.

Does the evidence upon which the prosecution may expect to rely support the indictment, or, indeed, can it support any offense which the prosecution may have sought to present by the indictment?

Upon this point the chief contention seems again to be that the several acts of the Chickasaw Nation under which the two contracts with Mansfield, McMurray & Cornish were made were not submitted to the President for his approval and were therefore without validity. The conclusion appears to be drawn that if the acts lacked validity then any payment made under contracts entered into in pursuance of these acts or either of them constitutes a crime. I can not follow this argument. To begin with, it is a very close question whether or not these acts should have been submitted to the President for his approval. It is apparent that there is a conflict of opinion upon that branch of the case. Competent representatives of the Department of Justice seems to incline to the opinion that these acts did not come within the provision of the agreement of June 28, 1898.

I incline to the view that the employment of counsel and the incurring of ordinary expense in litigation for the protection of the ordinary interests of the nation might well be held to fall within the exception to the provision of the agreement. This being so, I can not believe that a prosecution for crime can be successfully based upon a mistaken but honest interpretation of this agreement. Of course we are all familiar with the general rule that everyone is presumed to know the law. But we also know that to convict of crime the intent must be found. In this case the charge is conspiracy, and once admitted that the interpretation of the treaty upon which the defendants acted can be honestly entertained I fail to see how a conspiracy can be predicated upon the bare fact of the failure to submit the acts for the President's approval. This conclusion, it appears to me, is sustained by the further circumstance that no secret was made of these transactions. These acts were public in the Chickasaw Nation, the contracts were public, the expense accounts were public, open to the inspection of any one interested; and, indeed, it appears that the entire situation was called to the attention of representatives of the Department of the Interior as early as 1902, that copies of expense accounts reached the Department from time to time, and that, therefore, impliedly, at least, the officials of the Department in control of this Indian tribe and its interests were advised of and consented to the manner in which this business was conducted.

It is true one of the witnesses before the grand jury testified that the question, whether or not the acts of the Chickasaw Nation in question should be submitted to the President for his approval,

the subject of discussion between him and Chief Johnson, and that the chief was opposed to such submission. But the same witness indicates that the act was finally forwarded by him with the knowledge of the chief and apparently with his consent. The attorneys are not referred to one way or the other. I do not believe that such conduct can substantiate a charge of conspiracy. Nor do I think that the case is materially strengthened by the fact that after the President's disapproval (to which the same witness testifies, but as to which nothing further is found in the record) the chief proceeded under the act upon the theory that the President's approval was unnecessary. After all this only brings us back to the first proposition. There is nothing in this branch of the case to sustain the charge of a conspiracy to collect moneys from the Chickasaw Nation upon fictitious claims, or, indeed, to justify the conclusion that the belief that the President's approval was unnecessary was not honestly entertained.

It is further contended that the defendants should be prosecuted because the moneys named in the indictment were collected upon insufficiently itemized statements. I can not believe that a charge of conspiracy can be maintained upon such slender grounds. It is true these statements should have been itemized, and it may be true that this was insufficiently done in these cases. What is proper itemizing and what is a bill of particulars has been the subject of considerable doubt. But it seems to me that where a party submits a statement in which he refers to the cases which he has had in hand, and gives the totals of his expenditures in connection with those cases, and such a statement is allowed and paid without objection, it can not be possible to sustain a charge of conspiracy upon this conduct alone, without more. My conclusion, therefore, is that the mere fact that the provisions of the acts which require or contemplate the itemizing of statements have not been strictly complied with can not in itself furnish sufficient ground for prosecution in this case.

This brings me to what I regard to be the real merit of the inquiry. Were the expenses for which Mansfield, McMurray & Cornish presented bills actually incurred, or did the attorneys present fictitious bills, and, if so, did they do it with the knowledge and consent of the several governors of the Chickasaw Nation; and may the charge of conspiracy be supported by such a state of facts?

I confess that this branch of the inquiry has given me some trouble; probably more than it seems to have caused officials who have been asked to investigate. This may be explained by the fact that these officials have had the opportunity to inspect the books and the accounts, and have been in a position in other ways to satisfy themselves as to some features that do not appear to be well explained by the documents placed at my disposal. I can not say that the amounts involved have impressed me as necessarily large. Of course, I do not refer to the $750,000 fee, the contract for which and the Congressional legislation in connection with which evidently have no immediate bearing upon this case. Neither do I refer to the other fees allowed under the two contracts which are in question, because, if it be true that acting under the contract in the absence of the President's approval does not in itself furnish sufficient ground for an indictment, then these fees were, for the purposes of this inquiry, properly allowed and paid.

The question of the amounts collected, therefore, arises only as to the expenditures and costs outside of fees; and when we take the total amount paid out by the nation on this account, and distribute it over the number of years covered by the employment, I confess the amounts do not impress me as being necessarily large. The affairs of the Chickasaw Nation were then undergoing changes that made the incurring of large and varied expenditures inevitable. To that extent I agree with the conclusion reached by the other inquiries; assuming, of course, as I do, and as the testimony furnished seems to show, that the expenditures charges for covered court costs, witnesses' fees, even constables' fees, traveling expenses, etc.

Assuming, however, that on their face these allowances for expenses, etc., do not seem large, my difficulty is not necessarily overcome. I see that the amount of $2,700 allowed for expenses under the first contract was collected in full for each year. On the face of the statement it looks as though the attorneys had assumed the right to receive this amount whether it was actually expended or not. Clearly, if the expenditures do not reach that amount the attorneys were not entitled to collect it; and the rightful collection must therefore rest upon the assumption that the expenditures exceeded, or at least reached, the sum to which the first act limited those expenditures. I have nothing before me to satisfy myself upon that point, unless I am to accept the result of other investigations upon this point, as well as the absence of damaging testimony before the grand jury. I am impressed, of course, with the fact that Mr. Gregg, especially, in his carefully prepared report, specifically states that he has examined the books and the accounts of expenditure and that they tally with the amounts charged. Assuming this to be correct, and that the books themselves are correct, as I am not in a position to say from my own investigation, my difficulty in this respect would be disposed of. In like manner I may accept the explanation of the warrants for expenses turned over direct to Governor Johnson.

A similar difficulty, although less calculated to arouse question, arises as to the expenses paid under the second contract. Itemizing here was also unsatisfactory. While the failure to itemize properly is not itself a crime, it is, of course, possible that insufficient itemizing was a cloak for a crime. Again, Mr. Gregg has examined the books and accounts and reports that they tally. To repeat, if I am to accept his conclusion as to the correctness of the charges, the question is, in my opinion, answered. As the result of my own inquiry, I can not answer for this conclusion. But, after all, no one can know of his own knowledge. My inquiry, like Mr. Gregg's, would be confined to a comparison of the books and the accounts, and to an investigation into the probability that the moneys were actually and properly expended. Presumably, I would reach the same conclusion.

Another difficulty grows out of the fact that in one of the many statements filed in connection with the case (among others in Mr. Gregg's report), it is made to appear that the attorneys charged the nation for moneys which they had paid out to cover expenses of members of the nation in attending the election to ratify the treaty of 1898. I am not familiar with the law or practice upon this subject. Inasmuch as little importance seems to have been attributed to this statement, I am disposed to think that perhaps it was customary to have the nation pay the traveling expenses of voters. Without

a satisfactory explanation, I would not be willing, however, to assume that such an expenditure was properly made by the attorneys, and, if made, was properly chargeable to the nation's treasury.

To repeat, I have no explanation for this item which to me seems satisfactory. I have not thought it necessary to await such explanation because, if this expenditure was wrong, the offense, if any, has undoubtedly been barred. This is the one item brought to my attention which, on its face, would appear to sustain the charge of conspiracy named in the indictment. It is fair, however, to say that I have not pursued the inquiry, and do not, therefore, make the accusation, because the offense, if there was one, would be barred, and because no such item is included in the indictment itself. The earliest item in the indictment is November, 1902, and the election in question was held, as I read it, in December, 1898. I have referred to this particular matter, therefore, not because it is of decisive importance, but because of its possible bearing upon the nature of the immediate charge and the propriety of further prosecution.

I have dwelt upon the circumstances of this case with as much detail as, in my judgment, they will bear. My conclusion, therefore, is that if I am to accept the results of the inquiries into facts already made, or if I am to rely upon the evidence produced before the grand jury alone, then the indictment can not be sustained, and upon that assumption I should have no hesitancy in recommending that it be nolle prossed. The district attorney in charge of this prosecution is upon the ground, where he can make every possible investigation of the facts, and has come to the conclusion that the prosecution is hopeless. That recommendation is joined in by a special representative of the Department sent to the particular locality to make his own inquiry, and who makes what appears to be a very careful report. These recommendations have served to change the attitude of the Interior Department. Under such conditions I can find no justification, with the facts as so far presented to me, to insist upon a prosecution which would put defendants to a needless and costly trial and would involve the employment of special counsel and would necessarily incur very heavy expense to the nation.

If, on the other hand, I am not free to act upon Mr. Gregg's findings of facts, or if there is promise of supplementing the evidence before the grand jury, then a further inquiry may, of course, disclose irregularities in the accounts and books of the attorneys which so far have not been made to appear. It can not be denied that the running of three employments with the nation at one and the same time, the fact that the attorneys appear to have practically financed the affairs of the nation, and that the accounts rendered do not on their face furnish the needed information is calculated to arouse such an inquiry. Upon the whole, therefore, my conclusion is this: In so far as the indictment relies upon the bald circumstances that the acts of the Chickasaw Nation were not approved by the President, or that the expense accounts rendered by the attorneys were not properly itemized, the indictment can not, in my opinion, be sustained.

If I am to pass upon the remaining questions of fact in the light of the documents before me—that is, the testimony before the grand jury and Mr. Gregg's conclusions—then I also recommend the dismissal of the indictment. If, however, I am to conclude upon the facts in dispute after an independent inquiry, I, of course, am not

now prepared to state it. To do that I would have to visit the Territory, or have persons in possession of facts come here.

If, in other respects, I have left untouched or have unsatisfactorily disposed of any feature of this case, I shall, of course, hold myself ready to comply with such instructions as you may see proper to give me.

In the meantime I venture to express my surprise that no civil proceedings have been instituted to recover for the Chickasaw Nation the money of which, as it is contended, they have been wrongfully deprived. It seems to me such a proceeding might serve the double purpose of recovering the funds and developing the truth of this prolonged controversy.

Respectfully submitted.

CHARLES NAGEL.

Hon. CHARLES J. BONAPARTE,
Department of Justice,
Washington, D. C.

EXHIBIT G.

DEPARTMENT OF THE INTERIOR,
Washington, September 4, 1907.

SIR: I have the honor to transmit herewith letter from the Acting Commissioner of Indian Affairs, dated July 27, 1907, approved by me, reporting upon your communication dated June 29, 1907, transmitting a copy of a letter from Charles Nagel, St. Louis, Mo., dated June 24, 1907, in regard to indictments against Mansfield, McMurray & Cornish and others for conspiracy to defraud the Chickasaw Nation.

I concur in the recommendation that the indictments referred to be dismissed, and that suits be instituted against the parties indicted for the moneys alleged to have been wrongfully received, if, in your judgment, such suits can be successfully maintained.

The Department will be pleased to have the original papers referred to by Mr. Nagel returned for its files when they shall have served the purpose for which they were transmitted.

Very respectfully,

G. W. WOODRUFF,
Acting Secretary.

The ATTORNEY-GENERAL.

EXHIBIT H.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 27, 1907.

SIR: The office is in receipt of departmental letter of July 22, 1907, transmitting for consideration and early report a copy of a letter from the Attorney-General dated June 29, 1907, inclosing a copy of a letter from Charles Nagel, dated St. Louis, Mo., June 24, 1907, in regard to indictments against Mansfield, McMurray & Cornish

and others for conspiracy to defraud the Chickasaw Nation. Mr. Nagel seems to fully cover the subject and reaches the conclusion that the indictments should be dismissed. He does not think there is sufficient evidence to justify the Government in prosecuting the persons who have been indicted, and from his letter it seems that he doubts whether there was sufficient evidence before the grand jury on which to found the indictments.

United States Attorney Walker and Mr. Gregg, of the Department of Justice, have heretofore recommended that the indictments be dismissed. Their letters are not before the Office, but from what the Office is able to recall of what was said by them, and in view of Mr. Nagel's recommendation, it is believed that no good purpose would be served by bringing to trial Mansfield, McMurray & Cornish and the others indicted with them, and it is therefore recommended that the Department of Justice be requested to instruct the proper United States attorney to dismiss the indictments.

You call the attention of the Office to the last paragraph of Mr. Nagel's letter, in which he expresses surprise that civil proceedings have not been instituted to recover the Chickasaw Nation moneys alleged to have been wrongfully used by Mansfield, McMurray & Cornish and others. The Office understands that Mr. Nagel has reference to certain moneys expended in accordance with the provisions of certain acts of the legislature of the Chickasaw Nation, which acts were not submitted to the President for approval, and which probably were invalid without his approval. There are now pending in the Choctaw Nation two or three suits involving this question, and it does not seem that it would be necessary to begin suit on behalf of the Chickasaw Nation until the Choctaw suits are disposed of and the question determined. However, the Office sees no objection to the institution of suits on behalf of the Chickasaw Nation pending the determination of the Choctaw cases, and if such action is taken and the court holds that the acts involved in the Choctaw suits did not require the approval of the President, the Chickasaw suits can then be dismissed and but little expense will have been incurred.

The papers received with your letter are returned.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

The SECRETARY OF THE INTERIOR,

July 30, 1907.

Approved:

G. W. WOODRUFF, *Acting Secretary.*

EXHIBIT I.

UNITED STATES OF AMERICA,
Indian Territory, Southern District, ss:

In the United States court for the southern district of the Indian Territory, sitting at Ardmore, for the May term, 1905.

UNITED STATES *v.* D. H. JOHNSTON, P. S. MOSELY, George Mansfield, J. F. McMurray, and Melvin Cornish, defendants.	Indictment for conspiracy.

The grand jurors of the United States of America, duly selected, summoned, empaneled, sworn, and charged to inquire within and for the body of the southern district of the Indian Territory, in the name and by the authority of the United States of America, upon their oaths do find, present, and charge that one D. H. Johnston, one P. S. Mosely, one George Mansfield, one J. F. McMurray, and one Melvin Cornish, and others to the grand jury unknown, on the 2d day of November, A. D. 1902, within the southern district of the Indian Territory, did unlawfully and feloniously commit the crime of conspiracy to commit an offense against the United States by defrauding the Chickasaw Nation, committed as follows:

That during all the times herein mentioned the said P. S. Mosely was governor of the Chickasaw Nation except from September, 1904, when the said D. H. Johnston was governor of the Chickasaw Nation, and during all of these times the said George Mansfield, J. F. McMurray, and Melvin Cornish were each citizens of the United States and not members of any Indian tribe or nation and were associated together as a firm of attorneys under the name and style of Mansfield, McMurray & Cornish.

That the said Chickasaw Nation was at all times herein mentioned composed of the Chickasaw tribe of Indians and duly authorized and recognized by the laws of the United States as political dependency and government, under the name of the Chickasaw Nation, having a governor, auditor public accounts, national treasurer, and legislature; that to the said Chickasaw Nation there belonged in the Treasury of the United States large sums of money known as trust and invested funds, coal and asphaltum royalty funds, and funds derived from the sale of lots in town sites.

That at the time and place aforesaid and at all times herein mentioned the said D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, and others to the grand jury unknown, did falsely, feloniously, unlawfully, and wickedly conspire, combine, confederate, and agree together among themselves to defraud the Chickasaw Nation out of large and divers sums of money in the Treasury of the United States belonging to the said Chickasaw Nation.

That in pursuance to and to effect the object of said conspiracy, combination, confederacy, and agreement said P. S. Mosely, as gov-

ernor of the Chickasaw Nation, caused the auditor public accounts, without authority of law, to issue at divers times certain warrants upon the national treasurer of the Chickasaw Nation, payable to the said Mansfield, McMurray & Cornish, at such times and in amounts as follows:

No.	Date.	Amount.	No.	Date.	Amount.
801	November 2, 1902	$2,700.00	1476	February 3, 1904	$2,000.00
802	November 26, 1902	2,500.00	1477	do	1,333.00
803	November 8, 1902	2,500.00	1478	do	1,667.00
804	November 12, 1902	1,000.00	1479	do	1,641.95
805	do	250.00	1480	do	1,000.00
806	do	100.00	1485	do	2,700.00
807	do	515.00	2235	July 28, 1904	3,879.45
943	April, 16, 1903	396.05	2237	do	2,700.00
944	do	1,628.75			
945	do	365.75		Total	28,876.90

That in pursuance to and to effect the object of said conspiracy, combination, confederacy, and agreement said D. H. Johnston, on the 14th day of February, 1905, within the district and Territory aforesaid, without authority of law, caused the auditor of public accounts to issue a certain warrant upon the national treasurer of the Chickasaw Nation, payable to the said Mansfield, McMurray & Cornish, No. 112, for the sum of $2,500.

That each of said warrants hereinbefore named were issued upon a false, fictitious, and pretended claim that the amounts therein named were for actual expenses of the said Mansfield, McMurray & Cornish while engaged as attorneys for the Chickasaw Nation.

That in pursuance of and to effect the object of said conspiracy, combination, confederacy, and agreement said D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, and each of them, did present said false and fraudulent warrants, well knowing they were false and fraudulent, to the national treasurer of the Chickasaw Nation, and caused the same to be paid by the said national treasurer out of the trust funds of the said Chickasaw Nation then in the subtreasury of the United States at St. Louis, Mo.; that at the time such moneys were paid said D. H. Johnston, P. S. Mosely, George Mansfield, J. F. McMurray, and Melvin Cornish, and each of them, well knew that they were not lawfully entitled to said money, and well knew that said items of expenses were fictitious and fraudulent, and well knew that no itemized statement of expenses, as required by law, was ever presented, allowed, or approved, and well knew that said money was obtained without consideration or without any authority of law, but falsely, fraudulently, feloniously, unlawfully, and wickedly did then and thereby contrive and intend to cheat and defraud the Chickasaw Nation out of said moneys, to wit, the sum of $31,376.90; and did then and thereby cheat and defraud the said Chickasaw Nation out of the moneys aforesaid; and did embezzle and convert to their own use the aforesaid moneys, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

(Signed) W. B. JOHNSON,
United States Attorney.

EXHIBIT J.

DEPARTMENT OF JUSTICE,
July 31, 1905.

DEAR MR. ATTORNEY-GENERAL: I received to-day your letter of the 28th instant, with inclosures from Mr. Cecil A. Lyon, of Sherman, Tex., and after considering the subject in question sent Mr. Lyon the following telegram:

Am directed to have your Indian Territory matter inquired into by competent person. Think it would be well to present case to me here, at least preliminarily, provided I am satisfactory person. Frank answer by wire will not prejudice your friends.

At the time the indictments were found against Mansfield, McMurray & Cornish, Marshal Colbert, and others Colonel Mosby was at Ardmore, Ind. T., with authority to go before the grand jury. He was not concerned with the Mansfield matter, but with the question of fraudulently reissued Chickasaw warrants. He heard the testimony of one of the members of the Mansfield firm, however, and came back with a strong impression that they were guilty. He showed me since a letter from the district attorney, Mr. Johnson, expressing the same opinion. Colonel Mosby knows little about the matter, and I attach no great importance to his impression, while Johnson is said by the Mansfield firm to be unfriendly, for reasons stated in Mr. Lyon's communications, which you saw.

I should like you to know in a general way something about this matter at this time. The firm of attorneys, acting for the Choctaw and Chickasaw nations, obtained legislation establishing the Choctaw and Chickasaw citizenship court to review decisions of Judge Townsend, in whose court the indictments have been found, and other regular judges of the Indian Territory, which decisions admitted to the rolls of tribal citizenship two or three thousand persons, who would have shared in the land allotments. The citizenship court has decided against most of them, and that has resulted in saving to the tribes lands said to be worth as much as $15,000,000.

The firm had contract with the Indians for 9 per cent of what they should save, which percentage would have amounted to considerably over a million dollars. This contract the Secretary of the Interior refused to approve, proposing to allow a fee of $250,000, which the firm refused. They went to Congress and had the question of a reasonable fee submitted by law to the citizenship court, which allowed them $750,000.

An injunction proceeding against Secretaries Hitchcock and Shaw was begun last winter to prevent payment of this fee, the bill charging all kinds of frauds, etc. I represented the two Secretaries.

Secretary Hitchcock was disposed to believe the charges of fraud and, at all events, took and still takes a very unfavorable view of the firm. The bill was dismissed.

It has been suggested, and seems to be believed by some people, that the firm bought its way through Congress in the matter of the fee legislation, and naturally the attorneys of the citizenship claimants who were defeated by the efforts of the firm and those claimants themselves are not overfriendly toward the firm. And some small people are doubtless envious about the big fee.

Of course an indictment having been found, what is now asked of the President is a very serious thing, and may give rise to much criticism if he should decide to have the indictment dismissed and action taken other than the trial of the case by the court and jury.

I shall therefore endeavor to be very careful before advising such action.

Very truly, yours,

CHARLES W. RUSSELL.

Hon. W. H. MOODY,
Attorney-General, Boston, Mass.

EXHIBIT K.

DEPARTMENT OF JUSTICE,
Washington, September 29, 1905.

Mr. ATTORNEY-GENERAL: I duly received from you a letter dated July 28 last, inclosing a communication from Mr. C. A. Lyon, transmitted to you by the President, concerning an indictment of Mansfield, McMurray & Cornish, Governor Johnston, of the Chickasaw Nation, and others for conspiracy and embezzlement of Chickasaw funds. Your letter stated that the President was anxious to have the matter investigated and directed me to have a competent person make the investigation.

I answered on July 31 last (copy hereto attached). As I told you in my answer, I wired Mr. Lyon on that day as follows:

> Am directed to have your Indian Territory matter inquired into by competent person. Think it would be well to present case to me here at least preliminarily, provided I am satisfactory person. Frank answer by wire will not prejudice your friends.

I called Mr. Johnson, the district attorney, to Washington, and Mr. McMurray, of the firm of attorneys in question, was requested to come, and came. I had a long talk with Mr. Johnson, who had expressed the opinion that the accused were guilty.

Mr. McMurray had promised to bring his books and papers, but did not do so, and after a brief conference asked for time to prepare.

A few days ago I had Mr. Johnson, Mr. McMurray, and his partner, Mr. Cornish, before me, with all the evidence and documents, and had my assistant, Mr. Lawrence, present during the examination.

As I wrote you:

> Of course, an indictment having been found, what is now asked of the President is a serious thing, and may give rise to much criticism if he should decide to have the indictment dismissed and action taken other than the trial of the case by the court and jury. I shall therefore endeavor to be very careful before advising such action.

I have been, accordingly, very careful and deliberate, and have nevertheless reached the conclusion that the prosecution should be dismissed or nolled.

The indictment of Governor Johnston, Governor Mosely, of the Chickasaw Nation, and members of the law firm goes upon the theory that these persons conspired together to obtain some of the funds of the Chickasaws by warrants drawn upon the Treasurer and issued by direction of the governor, based upon pretended expenses of liti-

gation incurred by the firm on behalf of the nation, and that they embezzled the funds so obtained, and that no such expenses had been incurred and that no accounts such as required by the Chickasaw law and a contract with the firm had been presented by the firm.

Sufficient facts were produced to show an apparent case, but it needed only an explanation and the production of some documentary evidence to make it fall to pieces. It was shown that one of the warrants had been made out payable to Governor Johnston himself, and from this fact it was evidently inferred that this was a part of his share of the spoil. And much was made of the fact that the Chickasaw law under which most of the expenses were incurred had not been approved by the President; but it was believed to belong to a class of laws providing for the "regular and necessary expenses of the Government," which did not require the President's approval. This is probably correct, but if not correct, this is a point about which lawyers would naturally differ.

I have not thought it my duty to decide this matter upon such technicalities, but have sought to ascertain whether the expenses were really incurred in good faith for the benefit of the nation or, on the other hand, the moneys were embezzled in pursuance of a criminal conspiracy.

It is established before me beyond any doubt that the former is true and that the indictment has done a great injustice to the persons indicted, four of whom, including Governor Johnston, were earnestly, intelligently, and successfully striving for the welfare of the Chickasaw Nation.

I therefore recommend not only the dismissal of the prosecution, but the giving out of something like the following:

The Department of Justice, by direction of the President, has carefully investigated the matter of the indictment of Governor Johnston, Governor Mosly, of the Chickasaw Nation, and Mansfield, McMurray & Cornish, attorneys for the nation, for a criminal conspiracy to obtain and embezzle the nation's funds under the false pretense of settling accounts for expenses of litigation on its behalf, and has reached the conclusion that the indictment has done a grave injustice to Governor Johnston and the attorneys. It will be remembered that these attorneys received a very large fee last winter out of the funds of the tribe for successfully conducting litigation to take from the citizenship roll several thousand persons who had been wrongfully admitted to citizenship and hence to share in allotment of land, and that a certain former officer of the tribe brought suit against the Secretary of the Interior, the Secretary of the Treasury, and Treasurer to prevent the payment of this fee. At that time practically the same charge was brought against the attorneys, and the complainant then was one of those who appeared before the grand jury recently. Of course the contest over the right to enrollment of citizens and the consequent right to receive allotment engendered much bitterness against these attorneys, which was increased by their successful struggle to enforce the tribal taxes against merchants and others. The Department of Justice and the Interior Department have been in touch with them for a number of years and knew that they were actively and busily at work to further the interests of the Indians and uphold the hands of the Secretary of the Interior in

protecting them. The indictment, therefore, came as a great surprise.

Respectfully, CHARLES W. RUSSELL,
Special Assistant Attorney-General.

EXHIBIT L.

OFFICE OF UNITED STATES ATTORNEY,
SOUTHERN DISTRICT OF INDIAN TERRITORY,
Ardmore, Ind. T., October 20, 1905.

SIR: I am in receipt of a letter from Assistant Attorney-General Russell, dated October 14, 1905, inclosing his report to you "on the indictment of Mansfield, McMurray & Cornish and Governor Johnston," for conspiracy, with instructions to make such comment thereon as I might desire.

It is useless for me to say that a request for me to comment on a report of a superior officer carries with it such embarrassment that I prefer to recite the facts, though lengthy, and let you judge whether my conclusion was correct that these defendants under the evidence before the grand jury which is yet to my mind unexplained, should have been indicted and subjected to a trial as other defendants; or that of Mr. Russell, who recommends not only a dismissal of the case, but that an apology be offered by the Department of Justice for the injustice done these defendants, and Mr. Ward, who is not one of the defendants in this indictment, but a witness against defendants.

On May 20, 1905, Mr. Jenkins, representing the Interior Department, called at my office and submitted a statement of facts about the fraudulent recirculation of Chickasaw-school warrants by various parties, including our marshal, and Mr. Ward, deputy clerk, and requested that the matter be submitted to the grand jury, then in session at Ardmore. I was personally engaged in the court room in the trial of cases, and had two of my assistants at Pauls Valley attending the court there. I therefore requested Mr. Jenkins to wait until I could communicate with you, which I did, requesting that some special officer be detailed to look after this matter. You immediately wired me to give the matter my personal attention, and sent Col. John S. Mosby to be present and assist in the investigation. The grand jury was composed of men perhaps unexcelled in intelligence and integrity anywhere. (I inclose a list of their names and occupations.) Many of these jurors personally knew Mr. McMurray, and some had been his friends for more than twenty years.

The investigation began, involving not these defendants, but others. On the second day appeared on the scene many of the defendants, including Ward, Colbert, Johnston, and McMurray, none of whom lived here, who began demanding of the grand jury that they be permitted to come in and testify. Although it is an unusual thing to permit defendants to appear before a grand jury, I felt that a thorough investigation should be made, and the grand jury not only let them appear but Mr. Ward sent in two or three other witnesses. Mr. McMurray was, for some unknown reason to me, not permitted to come before the grand jury until the last day, and then his ex-

planations were so unsatisfactory they injured instead of helped his case. During the investigation of others, as I have stated, evidence incriminating Governor Johnston, ex-Governor Mosely, and Mansfield, McMurray & Cornish developed. This they seemed to know almost as soon as I did, and they at once began to exercise every influence within their power to prevent an indictment. I have since learned that they had friends in Washington interceding at that time so strenuously that Colonel Mosby received a telegram from the Department to "see that Mansfield, McMurray & Cornish had a square deal."

I will confine myself to the evidence against Mansfield, McMurray & Cornish, Governor Johnston, and ex-Governor Mosely—Ward being in another and different indictment, and not having the slightest connection with them.

In August, 1898, D. H. Johnston was elected governor of the Chickasaw Nation for a period of two years. In September, 1899, the following act was passed by the Chickasaw legislature and approved by the President:

AN ACT Approving the contract of Mansfield, McMurray and Cornish for legal services, and making appropriations therefor.

Whereas on July twentieth, eighteen hundred and ninety-nine, Douglas H. Johnston, governor of the Chickasaw Nation, entered into a contract with Mansfield, McMurray and Cornish, attorneys at law, to represent the Chickasaw Nation in all matters of citizenship now pending before the Dawes Commission, the Secretary of the Interior of the United States, and the United States courts, to the final completion and approval of the rolls of Chickasaws, said contract to be subject to be annulled by the legislature of the Chickasaw Nation after two years from the date thereof; and

Whereas it is provided in said contract that the said Mansfield, McMurray and Cornish are to receive as a compensation for such legal services, the sum of five thousand dollars per annum, together with their actual and necessary expenses incurred in the performance of such services, such expenses to be rendered in duly verified accounts to the governor of the Chickasaw Nation on the twentieth day of each month, to be certified by him for payment, as provided by the terms of said contract; and

Whereas in the trial of the contested cases of those claiming Chickasaw citizenship, before the Dawes Commission and the Secretary of the Interior, and in certain proceedings now pending and to be instituted in the United States courts in connection with citizenship matters, it will be necessary to incur expenses in the way of witness fees, mileage, court costs, and so forth: Therefore

Be it enacted by the legislature of the Chickasaw Nation,

SECTION 1. That the said contract entered into on July twentieth, eighteen hundred and ninety-nine, between Douglas H. Johnston, governor of the Chickasaw Nation, on the part of the Chickasaw Nation, and Mansfield, McMurray and Cornish, is hereby ratified and approved.

SEC. 2. That an appropriation is hereby made therefor out of any funds belonging to the Chickasaw Nation not otherwise appropriated, and the auditor of public accounts of the Chickasaw Nation is hereby directed to issue his warrant on the treasurer of the Chickasaw Nation for such salary and expenses, and the treasurer is directed to pay the same out of any funds of the Chickasaw Nation in his hands or that may come into his hands not otherwise appropriated: *Provided,* That said expenses, including traveling expenses, clerical assistance, postage, and stationery of attorneys, per diem and mileage of witnesses, court costs, and such other items of expense as may be incurred in the performance of such services, shall not exceed the sum of twenty-seven hundred dollars per annum.

SEC. 3. That this act shall take effect and be in force from and after its passage and approval by the President of the United States.

During the year 1900 every citizenship case pending in the courts of this district was disposed of, a majority of them having been disposed of before their employment, and the citizenship court did not

begin work until about January 1, 1903, on a rehearing of these cases. On October 26, 1900, the legislature passed an act as follows:

AN ACT To provide for regular and necessary expenses to protect the interest of the nation, and directing payment of the same out of the contingent fund of the governor.

Whereas past experience has shown that regular and necessary expenses must be provided for protecting the interests of the nation in the various matters that arise from time to time, such as court costs, witness fees, and other expenses of litigation, traveling expenses, postage, stationery, and so forth: Therefore

Be it enacted by the legislature of the Chickasaw Nation, The governor is authorized to incur such expenses, including the items above mentioned, and to pay the same out of his contingent fund, and an appropriation therefor, in addition to the amount now fixed according to law, is hereby made, to be used and expended, if in his judgment the same shall be necessary and such expenses as shall be or have been incurred, under the direction of the governor, shall be rendered in itemized accounts, and upon his approval thereof the national auditor shall draw his warrant therefor, and the national treasurer shall pay the same; and such accounts shall be retained by the governors as vouchers for such expenditures out of the contingent fund, for the information of the legislature; and this act shall take effect and be in force from and after its passage and approval.

These two acts just mentioned were the sole authority for the employment of this firm of attorneys and the expenditure of the moneys hereinafter mentioned from 1899 until this time. In 1899 an act was passed authorizing the governor to employ J. R. Burton as general attorney for two years. In 1901 an act was passed authorizing the governor to employ Z. T. Burton for two years as attorney. In the same year an act was passed to pay William Murray $800 for services rendered as attorney.

I mention these facts to show that whenever the Chickasaws employed an attorney it was only for two years at a time, and this has been their custom for the past fifty years.

In August, 1900, Governor Johnston was reelected for a period of two years. It was claimed by Mr. McMurray that Governor Johnston employed them as general attorneys also, and promised to see that they were paid a salary not to exceed $5,000. He did not know whether this contract was oral or in writing nor for how long it was to run.

Mr. Cornish, who was not present when the statement was made, subsequently stated that they were not employed for any stated amount, but could charge for services rendered, no maximum or minimum being fixed; that the contract was oral, and no time fixed for expiration of same. Mr. McMurray further stated that during this time he made another agreement with Governor Johnston by which he was to endeavor to get Congress to pass an act authorizing a per capita payment of $240,000, this being a fund known as the incompetent fund, held in trust by the United States for incompetents. For this service, his firm, in the event of success, was to receive $15,000, only $2,500 of which has yet been paid. He further stated that for the expenses incurred before the citizenship court they were to present monthly accounts, with vouchers, to the Secretary of the Interior for approval and receive payment; that they now held more than $10,000 of this expense account which has not been presented for approval or payment, although the citizenship court ceased to exist last December. Mr. Cornish stated that the Chickasaws also owed them about $28,000, which they had personally paid out.

I don't think I am mistaken about these statements. If I am correct, then the Chickasaw government is still indebted to them as follows: $12,500, $40,000, $28,000; total, $80,500. I presume the $40,000 item will be shared jointly by the Choctaw and Chickasaw nations.

I submit a statement showing the amounts received by them from the Chickasaw Nation:

For the year:	
1900	$13,000.00
1901	20,971.35
1902	22,671.11
1903	10,652.78
1904	26,921.40
Total	94,216.64

The acts of 1899 and 1900, copied in full, are the only laws authorizing the governor and these attorneys to do anything or draw any moneys.

In addition to the above, Mr. McMurray stated that in a hot contest in an election to ratify or defeat the supplemental treaty they hired people to go around and make speeches, give barbecues, etc., and this afterwards was paid out of the Chickasaw funds. I cite these several facts to show the extravagant and illegal use of funds by the governor and these attorneys, and I have only related a few of them. Under the indictment I can introduce any evidence tending to show a conspiracy to embezzle the funds of the Chicaksaws.

I submit now a sample copy of the way their accounts were itemized, as provided for by the two acts above set out, all of the others being similar, the originals of which I have:

EXPENSE ACCOUNT OF MANSFIELD, M'MURRAY & CORNISH—GENERAL CONTINGENT.

[From April 19, 1902, to October 18, 1902.]

Account of expenses incurred by Mansfield, McMurray & Cornish under the direction of the governor of the Chickasaw Nation, under the act of the legislature of the Chickasaw Nation approved October 26, 1900, in protecting the interests of the nation:

Traveling and other incidental expenses, court costs in all suits pending in the United States courts and elsewhere affecting the rights and interests of the Chickasaws, except such expenses as are payable out of the funds provided for payment of expenses before the Dawes Commission and the Interior Department in citizenship matters, clerical assistance and other expenses in copying records of the United States court for the central and southern districts of the Indian Territory and of the Dawes Commission for use before the Choctaw and Chickasaw citizenship court, expenses of members of firm at Washington and elsewhere, and expenses in connection with negotiation and ratification of supplementary agreement and all other usual and necessary expenses incurred	$6,865.00

The above amount is correct as stated.

MANSFIELD, MCMURRAY & CORNISH.

EXPENSE ACCOUNT OF MANSFIELD, M'MURRAY & CORNISH.

In protecting the interests of the nation in all matters that have arisen, other than citizenship, from October 1, 1903, to July 25, 1904, under the act of the legislature of the Chickasaw Nation, approved October 26, 1900.

In the various suits and proceedings arising in and pending before the United States courts in Indian Territory, involving tribal timber, taxes, and lands sought to be condemned by railway companies for rights of way, station grounds, water stations, and other railway purposes; in various matters pending before the Commission to the Five Civilized Tribes, the United States Indian agent, the United States Indian inspector, the Commissioner of Indian Affairs, the Secretary of the Interior, and the Congress of the United States, involving the rights and interests of the Chickasaws; in expenses of members of firm and assistants to and from Washington in connection with these and other matters; clerical assistance, traveling expenses, postage, stationery, telegraph and telephone expenses, and all other miscellaneous expenses chargeable under said act $3,879.45

The above account is correct.

MANSFIELD, MCMURRAY & CORNISH.

SALARY ACCOUNT OF MANSFIELD, M'MURRAY & CORNISH.

As citizenship attorneys of the Chickasaw Nation, under the act of the legislature of the Chickasaw Nation approved September 20, 1899:

July 20, 1904. To amount due as citizenship attorneys, at the rate of $5,000 per annum, from January 20, 1904, to July 20, 1904 ..... $2,500.00

I now submit a copy of one statement of work performed as general attorneys, amount charged, etc., to show that they were either employed at a salary of $5,000 per annum without authority of law or, if the charges were made for services performed, then I can prove that a great deal of the services charged for were never rendered at all:

EXPENSE ACCOUNT OF MANSFIELD, M'MURRAY & CORNISH—GENERAL CONTINGENT.

[From October 18, 1902, to March 30, 1903.]

Account of expenses incurred by Mansfield, McMurray & Cornish, under the direction of the governor of the Chickasaw Nation, under the provisions of the act of the legislature of the Chickasaw Nation approved October 26, 1900, in protecting the interests of the Chickasaw Nation, as follows:

Traveling expenses, court costs, and other usual and necessary expenses in suits and proceedings disposed of and pending in the United States courts in the Indian Territory and elsewhere, as follows:

City of Ardmore *v.* Choctaw and Chickasaw nations, and city of South McAlester *v.* Choctaw and Chickasaw nations to condemn lands of the tribes for waterworks; United States *v.* Choctaw and Chickasaw nations, in Ardmore court, and The United States *v.* Choctaw and Chickasaw nations in South McAlester court, to condemn town lots for use as sites for United States jails; incorporated town of Spiro *v.* Choctaw and Chickasaw nations, in Poteau court to condemn lands for waterworks; Thompson *v.* Morgan, in court of appeals at South McAlester, upon appeal from the United States court at Pauls Valley; Choctaw and Chickasaw nations *v.* McKenna and Page, in court of appeals, at South McAlester, involving the validity of the act of Congress authorizing the condemnation of lands of the Choctaws and Chicasaws, without compensation for turnpikes and toll bridges; Choctaw and Chickasaw nations *v.* Fort Smith and Western Railway Company, in United States court at South McAlester, to compel such company to make adequate compensation for right of way; Kansas City Southern Railway Company *v.* St. Louis and San Francisco Railway Company and the Choctaw and Chickasaw nations, in Poteau court, to

condemn lands for reservoirs at Poteau; expenses incurred in making settlement with the Enid and Anadarko Railway Company for right of way; Chicago, Rock Island and Pacific Railway Company for station grounds at Chickasha, Duncan, and other points; St. Louis and San Francisco Railway Company for station grounds at Francis, Ada, Ruff, Skullen, Mill Creek, Randolph, Madill, Helen, and Platter; St. Louis, San Francisco and New Orleans Railway Company for station grounds at Hugo, Durant, Madill, and Ardmore; Missouri, Kansas and Texas Railway Company for lands for reservoir at Colgate; Gulf, Colorado and Santa Fe Railway Company for lands for station grounds and reservoirs at Purcell, Wynnewood, Marietta, and Bob; Choctaw, Oklahoma and Gulf Railroad Company for lands for reservoirs at Haileyville and Wapanucka, and for station grounds at Calvin, Krebs, Haileyville, Herbert, Carlo, and Milburn; Choctaw, Oklahoma and Gulf Railroad Company for right of way of Haileyville and Ardmore branch; Missouri, Kansas and Texas Railway Company for right of way for Colgate and Oklahoma City line; expenses incurred by George A. Mansfield, J. F. McMurray, and Melven Cornish, to and from, and at, Washington, in connection with the matter of the per capita payment for $40 per capita to the Chickasaws, enforcement of the laws of the United States regulating trade and intercourse with the Indian tribes, under the act of the legislature of the Chickasaw Nation, providing that the tribal taxes of the Chickasaw Nation shall be collected under the direction of the Secretary of the Interior and other matters before the Department of the Interior and the Congress of the United States, affecting the interests of the Chickasaw Nation; and expenses incurred for clerical assistance in office and other places, postage, stationery, telegraph, and telephone bills $2,388.55

The above account is correct as stated.

MELVEN CORNISH.

Your attention is directed to the first four items of this account, all of which were agreed upon before condemnation suits were brought, the same being only to perfect title with no contest.

United States *v.* Choctaw and Chickasaw Nations was to condemn a town lot for jail site. The Choctaw and Chickasaw nations were joined as defendants to remove any possible cloud to title; appearance was entered by letter, after said defendants had been paid in full, to the Indian agent, as required by law. In many instances the condemnation of lands for railroads were settled in the same way, the suits being brought as friendly ones to remove any possible cloud to title.

Your attention is invited to that portion of the account which says, "Expenses of George A. Mansfield, J. F. McMurray, and Melvin Cornish to and from and at Washington, in connection with the matter of the per capita payment of $40," etc. This item is for expenses incurred in connection with incompetent fund, above referred to, and where they were to receive an unauthorized fee of $15,000. Mr. Russell heard them state that they were only to receive expenses in event of failure to secure the legislation.

It is useless to go further into details.

This account was approved by Moseley, who became governor in August, 1902, for two years, when Johnston was again elected.

The evidence shows that these attorneys, and whoever happened to be governor, had the entire unlimited control of the finances of the Chickasaw Nation from October, 1900, and expended money on any pretext for any purpose they saw fit. Mr. Ward, who had been treasurer, testified that he had turned over to Governor Johnston

about thirty-five or forty checks that should have gone to Mansfield, McMurray & Cornish.

Before 1900 there was never a word of suspicion against the officials of the Chickasaw Nation. Their revenues about covered their expenses; but although their revenues were increased in many ways, including coal royalties, even their expenses for operating their schools had not been paid until Congress last winter appropriated something over $300,000 to pay off this indebtedness. That there has been an extravagant misuse of funds there can hardly be any question.

When I was called to Washington in August I was kept there about nine days, as it later appeared, waiting for the return of Mr. McMurray, who had gone for his books and other evidence to make explanations of the charges in the indictment. He came with Mr. Mansfield, but brought nothing, claiming to Mr. Russell that their books were kept under the supervision of Mr. Cornish, who was then in Colorado. It was then agreed that they would return in September with Mr. Cornish and the books. They came, but brought no books, stating then that they *never kept* any books at all. Not the slightest memoranda was ever exhibited in my presence to explain anything. What Mr. Russell saw and heard to cause him to report "sufficient facts were produced to show an apparent case, but it needed *only* an explanation and the production of some documentary evidence to make it fall to pieces" I can not say. The defendants did tell their story, but nothing was shown to support their statement that I saw. I would be pleased to see such documents, because my hope has always been, for many reasons, that they could explain these matters away.

Again, Mr. Russell says:

> It was shown that one of the warrants had been made out payable to Governor Johnston himself, and from this fact it was evidently inferred that this was a part of the spoils.

Mr. Russell had access to, and stated he read, the evidence taken before the grand jury. He must know Governor Johnston denied drawing a $2,700 warrant which, if due anyone, should have gone to Mansfield, McMurray & Cornish. On the next day after Mr. Ward had testified he came before the grand jury and admitted he got the warrant, and explained that he drew it so as to have money on hand when the attorneys needed it. In Washington, for the first time, these attorneys stated that was a mistake that the governor took the warrant, because he had already advanced them money out of his own funds. Mr. Ward, the treasurer, testified:

> I think the warrant was issued, and Mansfield, McMurray & Cornish indorsed the warrant, and I would give the check to Governor Johnston.
>
> Question. Did he ever get any other checks there payable to Mansfield, McMurray & Cornish?
>
> Answer. I don't remember; I think he did, though. * * * It was a considerable amount. I take it there were possibly thirty or forty all the time I was treasurer. I don't think it was less than that.

What explanation has been offered for Governor Johnston drawing checks that should have gone to Mansfield, McMurray & Cornish on itemized accounts approved by himself?

The statement was made that the expense account was charged equally to the Choctaw and Chickasaw nations, but not an account against the Choctaws was ever shown, although I requested it. Mr. Russell said that he could not see that it was "vital." From what

law or authority did they charge the Chickasaws one-half of the expenses incurred for the Choctaws. The Chickasaws own an undivided one-fourth interest in the lands, but they each maintain a separate form of government and divide the revenues from the soil in the proportion of 3 to 1. Each employs and pays its attorney out of its own funds. If these attorneys converted $25,000 of Chickasaw money to pay their alleged expenses when only $10,000 could be legally taken, does not that constitute an offense? And if the governor approved such an account, not itemized, only as shown, knowing that it was illegal, was he not acting with them to take money from the Chickasaws wrongfully? Therefore was it not relevant to know what amount of these alleged expenses were paid by the Chickasaw treasury?

Mr. Russell's reference to the large fee collected by these attorneys is not pertinent to the case, because no man on the grand jury was an Indian by blood; and I undertake to say not a member cared what fees were paid them. Besides, it was not a subject of investigation, directly or indirectly. The tax question could not have influenced the jury, because the only trouble ever had in this district over that subject was a small matter of litigation to test its validity, and in nearly every instance I personally appeared for the Government. These are subterfuges of the defendants. If their statements, supported by nothing, to my knowledge, are to be taken as the correct version of the matter, then I concur in the recommendations made.

Again, Mr. Russell refers to the fact that a "certain former officer of the tribe brought suit, etc., and practically the same charges were made against these attorneys, and this same man appeared before the grand jury." Is it contended that this matter was investigated in that civil suit? Was it not decided upon questions of law? This officer, Mr. McLish, had nothing to do with this investigation, because all the matters he knew of were barred by the statute of limitation. He was brought before the grand jury to contradict a statement made by Ward with reference to Chickasaw school warrants, a question not involved in this case. This man did not know an investigation was pending until I introduced him to Mr. Jenkins, thinking he could give some information that would throw light upon the case.

Again, Mr. Russell states that "the contest on the right to enrollment of citizens and the consequent right to receive allotment engendered much bitterness against these attorneys." The truth is from the date of employment of these attorneys less than seven hundred applicants for citizenship in the Chickasaw Nation had their rights contested, and this number included women and children. The district has a population of at least 250,000, and none of these applicants composed the grand jury. Mr. Russell seems to be confused about the relations existing between the Choctaw and Chickasaw nations. They are as distinct as any of the other tribes. Each has its separate funds, employs its own counsel, and defrays its own expenses. No Choctaw can hold office or vote in the Chickasaw Nation, although he may live there. There were about 2,000 contested cases of citizenship in the Choctaw Nation I am informed. These attorneys stated that the expense of litigation and of citizenship matters was charged equally. By what authority was this done? Why charge the Chickasaws one-half of expenses by taking it from moneys they